COLORADO REVISED STATUTES



TITLES 19-21

2012



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Colorado Revised Statutes

2012

Titles 19-21
Children's Code
District Attorneys
State Public Defender

♦♦♦

Edited, Collated, Revised,
Annotated, and Indexed
Under the Supervision and Direction of the

COMMITTEE ON LEGAL SERVICES

by

JENNIFER G. GILROY OF THE COLORADO BAR,

REVISOR OF STATUTES,

AND THE

OFFICE OF LEGISLATIVE LEGAL SERVICES

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Reenacted by the General Assembly as the
Positive Statutory Law of Colorado of a General and Permanent Nature
and as the Official Statutes of the State of Colorado

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CONTENT OF 2012
COLORADO REVISED STATUTES

Declaration of Independence
Constitution of the United States
Enabling Act of Colorado
Constitution of the State of Colorado

Title 1. Elections
Title 2. Legislative
Title 3. United States
Title 4. Uniform Commercial Code
Title 5. Consumer Credit Code
Title 6. Consumer and Commercial Affairs
Title 7. Corporations and Associations
Title 8. Labor and Industry
Title 9. Safety — Industrial and Commercial
Title 10. Insurance
Title 11. Financial Institutions
Title 12. Professions and Occupations
Title 13. Courts and Court Procedure
Title 14. Domestic Matters
Title 15. Probate, Trusts, and Fiduciaries
Title 16. Criminal Proceedings
Title 17. Corrections
Title 18. Criminal Code
Title 19. Children's Code
Title 20. District Attorneys
Title 21. State Public Defender
Title 22. Education
Title 23. Postsecondary Education
Title 24. Government — State
Title 25. Health
Title 25.5. Health Care Policy and Financing
Title 26. Human Services Code
Title 27. Behavioral Health
Title 28. Military and Veterans
Title 29. Government — Local
Title 30. Government — County
Title 31. Government — Municipal
Title 32. Special Districts
Title 33. Parks and Wildlife
Title 34. Mineral Resources
Title 35. Agriculture
Title 36. Natural Resources — General
Title 37. Water and Irrigation
Title 38. Property — Real and Personal
Title 39. Taxation
Title 40. Utilities
Title 41. Aeronautics: Aircraft and Airports
Title 42. Vehicles and Traffic
Title 43. Transportation

Colorado Court Rules

A—Z Index — Comparative Tables

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CERTIFICATION
OF
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The Committee on Legal Services hereby certifies that the 2012 Colorado Revised Statutes includes all the laws of a general and permanent nature of the state of Colorado as revised and reenacted in Colorado Revised Statutes 1973, together with all of the laws of a general and permanent nature enacted by the General Assembly subsequent to 1973, as corrected, collated, and revised as authorized by and in conformity with Article 5 of Title 2, Colorado Revised Statutes.

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TABLE OF CONTENTS

Source note explanation vi

Colorado statutory research vii

Bills without safety clauses - explanation of effective dates ix

Annotation explanation ix

Title 19 Children's Code ..... Title 19 - page 1

Title 20 District Attorneys ..... Title 20 - page 1

Title 21 State Public Defender ..... Title 21 - page 1

Source Note Information

A source note shows the legislative history of a C.R.S. section and is located immediately after the text of the section. The source note for each section indicates the year the section was added, each year it was amended, and the page of the Session Laws and the section of the bill where the amendment can be found. The source note includes the number of the section in prior codifications when applicable. For amendments made after 1973, information on each specific provision of the section that has been changed by a bill, the specific change to the provision (i.e. added, added with relocations, amended, amended with relocations, repealed, repealed and reenacted, or recreated and reenacted), and the effective date of the bill are shown.

The legislative history is arranged by year of passage; if the section was amended by two or more acts in the same year, the order of the information for that year is determined by the effective dates of the acts. The effective date in the source note indicates the date the act or portion of the act takes effect even if the text of the amendment indicates a different date. If the year is not included with the month and day, the provision is effective the year of passage. Additional information to assist the user in researching C.R.S. sections can be found beginning on page vii.

The following provides a further explanation of the information found in a source note:

"L." is the symbol for "Session Laws" and will be followed by a number indicating the year when the C.R.S. section was changed by an act generally either creating new law, amending existing law, or repealing existing law; except that, in the constitution, "L." also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

"Ex. Sess." is the symbol for "Extraordinary Session". If this symbol follows the year, the amended provision can be found in the Session Laws for an extraordinary session for that year and not in the Session Laws for the regular session of the General Assembly for that year (S, S2 in the Red Book).

"p." is the symbol for "page" and will be followed by a number indicating the page of the Session Laws where the amendment to the C.R.S. section can be found.

"§" is the symbol for "section" and will be followed by a number indicating the section of the act where the amendment to the C.R.S. section can be found.

"IP" is the symbol for the "introductory portion" to a section, subsection, paragraph, or subparagraph.

"Added" means the provision was newly enacted by the act (N in the Red Book).

"Added with relocations" means the provision in existing law was relocated from one title, article, part, or section to another title, article, part, or section with amendments by the act.

"Amended" means the provision in existing law was amended by the act (A in the Red Book).

"Amended with relocations" means the provision in existing law was amended to reorganize an entire title, article, part, or section by the act.

"Repealed" means the provision was deleted from the existing law by the act through the use of a repeal provision (R in the Red Book).

"R&RE" is the symbol for "Repealed and Reenacted" and means the provision in existing law was repealed and reenacted by the act (RE in the Red Book).

"RC&RE" is the symbol for "Recreated and Reenacted" and means a previously repealed provision has been recreated by the act (RC in the Red Book).

"Added by revision" means a provision providing for the repeal of a statutory provision on a specified date has been added by the Revisor of Statutes as a C.R.S. provision. Adding the provision is necessary because a separate section of the act provided for the repeal of the provision with a future effective date.

"Initiated" means a provision that was amended by means of an initiated petition approved by a vote of the people of Colorado at a general or an odd-year election.

"Referred" means a provision that was amended by a measure referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election; except that, in the constitution, a referred measure is indicated by "L." and also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

Starting in 2009, references to the bill number and chapter number have been included in the source note. If you are conducting a search on-line, the bill number reference within the source note links directly to the bill itself.

Colorado Statutory Research

Legislative history is not already written. It must be compiled by the researcher from many different sources and materials. The following information is a helpful starting point in identifying information you wish to research. Consult the red book table distributed with the session laws, the softbound editions of Colorado Revised Statutes beginning in 1997, the comparative tables located in the back of the C.R.S. index, C.R.S. 1963 and subsequent cumulative supplements thereto through 1971, and C.R.S. 1973 and annual cumulative supplements thereto through 1996.

Prior to 1921, enacted laws were not compiled into a comparative table, thereby making it more difficult to track the legislative history. Determining the subject matter in the statutory index is the only choice for tracking the history of a statute since a statute did not retain its original number. The General Statutes of 1883 arranged laws into numbered chapters, alphabetically entitled, collated, and arranged by sections. This became the foundation and

model for compiling the statutes until the codification of C.R.S. 1973. (See Revised Statutes of Colorado 1908, An Act Providing For the Compilation, Publication, and Distribution of all the general statutes of the state.)

References in some source notes throughout the Colorado Revised Statutes to "Code 08", "Code 21", and "Code 35" are to the Revised Statutes of Colorado 1908, the Compiled Laws of Colorado 1921, and the Colorado Statutes Annotated 1935, respectively. Each of these volumes set forth the general statutes of the state of Colorado, including the Code of Civil Procedure and, in 1935, the Colorado Supreme Court Rules. On January 6, 1941, the Colorado Supreme Court adopted the new Rules of Civil Procedure, which became effective on April 6, 1941, resulting in the publication of a replacement volume. Thereafter, the publication of the Colorado Court Rules, although a continuing part of the Colorado Revised Statutes, contained a combination of the Federal Rules and the Colorado Code of Civil Procedure and, in addition, included some provisions that were entirely distinct from both the Federal Rules and the Colorado Code of Civil Procedure, as adopted or amended by the Supreme Court of Colorado.

To research a statute as it existed in previous years, the following is a chronological list of C.R.S. publications and the correct citation for each publication.

Revised Statutes of Colorado	(1868)	R.S.
General Laws of Colorado	(1877)	G.L.
General Statutes of Colorado	(1883)	G.S.
Revised Statutes of Colorado	(1908)	R.S. 08
Compiled Laws of Colorado	(1921)	C.L.
Colorado Statutes Annotated	(1935)	CSA
Colorado Revised Statutes 1953	(1953)	CRS 53
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963
Colorado Revised Statutes	(1973)	C.R.S.

Comparative Tables:
R.S. 08 to C.L. 1921 - located in the front of the C.L. 1921
C.L. 1921 to CSA 1935 - located in the back of the Index to CSA 1935
CSA 1935 to CRS 1953 - located in the front of the Index to CRS 1953
CRS 1953 to C.R.S. 1963 - located in the front of the Index to C.R.S. 1963
C.R.S. 1963 to C.R.S. - located in the back of the Index to C.R.S.

Supplements to C.R.S. 1963 include:
1965 hardbound supplement containing laws enacted in 1964 and 1965
1967 hardbound supplement containing laws enacted in 1966 and 1967
1969 hardbound supplement containing laws enacted in 1968 and 1969
1971 hardbound supplement containing laws enacted in 1970 and 1971

The softbound publication of the "Official Report of the Committee on Legal Services" was not intended as an official publication of our office. Copies were distributed to the members of the General Assembly for the purpose of certifying the laws enacted in the 1972 and 1973 Sessions for inclusion in the compilation of the 1973 C.R.S., which was not available until 1974. To find the 1972 or 1973 amended language, refer to the session laws of either 1972 or 1973.

Supplements and Replacement Volumes to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes

Titles	Supplements to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes	Replacement Volumes and Supplements to Replacement Volumes
Titles 19, 20, & 21	1975-77 Supplements	**1978 Replacement Volume** 1979-85 Supplements **1986 Replacement Volume** Vol. 8B - Titles 19-21 1987-96 Supplements

Starting in 1997, annual softbound volumes are published each year.

For additional information on researching legislative history, see www.leg.state.co.us, Services Agencies, and select Legislative Legal Services. Choose Legal Topics and click on Researching Legislative History.

Bills Enacted Without A Safety Clause Explanation of Effective Date

If a bill is enacted without a safety clause and an effective date is not indicated in the bill, the effective date is the day following the expiration of the ninety-day period after final adjournment of the General Assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state Constitution unless a referendum petition is filed against the act within such time period. If a referendum petition is filed, the act, if approved by the people, will take effect on the date of the official declaration of the vote thereon by proclamation of the Governor or the date indicated in the act if it is later than the Governor's proclamation. The source note for a provision contained in such an act will indicate the actual date following the ninety-day period or the date set out in the act. If a referendum petition is filed, the date in the source note will be adjusted accordingly in the next publication following the election where the referendum petition is considered.

Annotations

Beginning in 2012, the annotations for Colorado state appellate court decisions include both public domain and regional reporter case cites. In preparing annotations to court decisions, we endeavor to include the most recent decisions. Occasionally, this may result in the inclusion of a decision before it becomes finalized and published in an official reporter. In such instances, the case cite will contain blank spaces for the volume and page number of the reporter. The volume and page number will be substituted for the blank spaces in subsequent publications of the statutes.

TITLE 19

CHILDREN'S CODE

TITLE 19

CHILDREN'S CODE

Editor's note: This title was numbered as chapter 22, C.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title, see the comparative tables located in the back of the index.

Art. 1. General Provisions, 19-1-101 to 19-1-403.
Art. 1.5. Task Force Study to Recodify Code (Repealed).
Art. 2. The Colorado Juvenile Justice System, 19-2-101 to 19-2-1305.
Art. 3. Dependency and Neglect, 19-3-100.5 to 19-3-703.
Art. 3.3. Child Protection Ombudsman Program, 19-3.3-101 to 19-3.3-109.
Art. 3.5. Colorado Children's Trust Fund, 19-3.5-101 to 19-3.5-109.
Art. 4. Uniform Parentage Act, 19-4-101 to 19-4-130.
Art. 5. Relinquishment and Adoption, 19-5-100.2 to 19-5-403.
Art. 6. Support Proceedings, 19-6-101 to 19-6-106.
Art. 7. Protections for Youth in Foster Care, 19-7-101 to 19-7-103.

ARTICLE 1

General Provisions

PART 1

GENERAL PROVISIONS

19-1-101. Short title.
19-1-102. Legislative declaration.
19-1-103. Definitions.
19-1-103.5. Other definitions. (Repealed)
19-1-104. Jurisdiction.
19-1-105. Right to counsel and jury trial.
19-1-106. Hearings - procedure - record.
19-1-107. Social study and other reports.
19-1-108. Magistrates - qualifications - duties.
19-1-109. Appeals.
19-1-110. Previous orders and decrees - force and effect.
19-1-111. Appointment of guardian ad litem.
19-1-111.5. Court-appointed special advocate.
19-1-112. Search warrants for the protection of children.
19-1-113. Emergency protection orders.
19-1-114. Order of protection.
19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement.
19-1-115.5. Placement of children out of home - legislative declaration.
19-1-116. Funding - alternatives to placement out of the home - services to prevent continued involvement in child welfare system.
19-1-117. Visitation rights of grandparents.
19-1-117.5. Disputes concerning grandparent visitation.
19-1-117.6. Definitions. (Repealed)
19-1-117.7. Requests for placement - legal custody by grandparents.
19-1-118. Court records - inspection. (Repealed)
19-1-119. Confidentiality of juvenile records - delinquency. (Repealed)
19-1-120. Confidentiality of records - dependency and neglect. (Repealed)
19-1-121. Confidentiality of records - "Uniform Parentage Act". (Repealed)
19-1-122. Confidentiality of records - relinquishments and adoptions. (Repealed)
19-1-123. Expedited procedures for permanent placement - children

under the age of six years - designated counties.
19-1-124. Providers of children's services using federal or state moneys - use of state accounting standards.
19-1-125. Family stabilization services.
19-1-126. Compliance with the federal "Indian Child Welfare Act".
19-1-127. Responsibility for placement and care.
19-1-128. Foster care sibling visits - rules.

PART 2

COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

19-1-201. Legislative intent.
19-1-202. Creation of CASA programs.
19-1-203. Program director.
19-1-204. Training requirements.
19-1-205. Selection of CASA volunteers.
19-1-206. Appointment of CASA volunteers.
19-1-207. Restrictions.
19-1-208. Duties of CASA volunteer.
19-1-209. Role and responsibilities of guardians ad litem - other parties.
19-1-210. Access to information.
19-1-211. Confidentiality.
19-1-212. Liability.

PART 3

RECORDS AND INFORMATION

19-1-301. Short title.
19-1-302. Legislative declaration.
19-1-303. General provisions - delinquency and dependency and neglect cases - exchange of information - civil penalty.
19-1-304. Juvenile delinquency records.
19-1-305. Operation of juvenile facilities.
19-1-306. Expungement of juvenile delinquent records.
19-1-307. Dependency and neglect records and information - access - fee - rules - records and reports fund - misuse of information - penalty.
19-1-308. Parentage information.
19-1-309. Relinquishments and adoption information.
19-1-309.3. Exchange of information for child support purposes - process.
19-1-309.5. Adoptive family resource registry.
19-1-310. Information related to intervention and prevention programs - review and evaluation of programs. (Repealed)
19-1-311. Centralized integrated data base system for children and families - strategic business plan - technology plan - children's information management committee - report. (Repealed)
19-1-312. Central registry phase out - implementation plan - repeal. (Repealed)

PART 4

PREVENTION PROGRAMS FUNDED THROUGH STATE AGENCIES

19-1-401 to 19-1-403. (Repealed)

PART 1

GENERAL PROVISIONS

19-1-101. Short title. This title shall be known and may be cited as the "Colorado Children's Code".

Source: L. 87: Entire title R&RE, p. 695, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. This section, as it existed in 1987, is the same as 19-1-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

An award of custody must serve the public as well as the best interests of the child. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

In determining custody in dependency and neglect hearing, juvenile court committed reversible error by failing to consider any purposes of this Colorado Children's Code and in relying solely on a limited number of purposes set forth in §14-10-124. L.A.G. v. People in Interest of A.A.G., 912 P.2d 1385 (Colo. 1996).

Applied in Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979).

19-1-102. Legislative declaration. (1) The general assembly declares that the purposes of this title are:

(a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;

(b) To preserve and strengthen family ties whenever possible, including improvement of home environment;

(c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child; and

(d) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

(1.5) (a) The general assembly declares that it is in the best interests of the child who has been removed from his own home to have the following guarantees:

(I) To be placed in a secure and stable environment;

(II) To not be indiscriminately moved from foster home to foster home; and

(III) To have assurance of long-term permanency planning.

(b) (Deleted by amendment, L. 92, p. 220, § 1, effective July 1, 1992.)

(1.6) The general assembly recognizes the numerous studies establishing that children undergo a critical bonding and attachment process prior to the time they reach six years of age. Such studies further disclose that a child who has not bonded with a primary adult during this critical stage will suffer significant emotional damage which frequently leads to chronic psychological problems and antisocial behavior when the child reaches adolescence and adulthood. Accordingly, the general assembly finds and declares that it is appropriate to provide for an expedited placement procedure to ensure that children under the age of six years who have been removed from their homes are placed in permanent homes as expeditiously as possible.

(1.7) The general assembly further declares that it is the intent of the general assembly to have the media and the courts refrain from causing undue hardship, discomfort, and distress to any juvenile victims of sexual assault, child abuse, incest, or any offenses listed in wrongs to children pursuant to part 4 of article 6 of title 18, C.R.S., by not disseminating or publishing the names of such victims.

(2) To carry out these purposes, the provisions of this title shall be liberally construed to serve the welfare of children and the best interests of society.

Source: L. 87: Entire title R&RE, p. 695, § 1, effective October 1. **L. 88:** (1.5) added, p. 755, § 1, effective May 31. **L. 90:** (1.7) added, p. 1007, § 1, effective July 1. **L. 92:** (1.5) amended, p. 220, § 1, effective July 1. **L. 94:** (1.6) added, p. 2051, § 1, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. This section, as it existed in 1987, is the same as 19-1-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Juvenile Delinquency in Colorado: The Law's Response to Society's Need", see 31 Rocky Mt. L. Rev. 1 (1958). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For note, "Juvenile Delinquency — Colorado's Unassumed Burden", see 36 U. Colo. L. Rev. 519 (1964). For article, "Children in Need: Observations of Practice of the Denver Juvenile Court", see 51 Den. L.J. 337 (1974). For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part II", see 14 Colo. Law. 794 (1985).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provisions of this title must be read and construed together. To hold otherwise would open the door to endless confusion and a myriad of conflicting jurisdictional claims respecting the interests of children in this state. Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957).

The Colorado Children's Code must be liberally construed. People in Interest of M.K.A., 182 Colo. 172, 511 P.2d 477 (1973).

Provisions of the Children's Code should be liberally construed to accomplish the purpose and to effectuate the intent of the general assembly. R.M. v. District Court, 191 Colo. 42, 550 P.2d 346 (1976).

In the best interest of child and society. When the general assembly said that "this title shall be liberally construed", it meant that it should be construed favorably to the best interests of the child and society. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973); People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Purpose of code. One of the underlying purposes of the Colorado Children's Code is to create distinction between adults and children who violate law. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

The Colorado Children's Code's sole emphasis is on rehabilitating children, assisting them in becoming responsible and productive members of society, and preventing them, while at an impressionable and vulnerable age, from becoming criminals. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

The overriding purpose of the Colorado Children's Code is to protect the welfare and safety of Colorado children by providing procedures through which their best interests can be served. L.G. v. People, 890 P.2d 647 (Colo. 1995); People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005); People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

To this end, dependency or neglect proceedings focus primarily on the protection and safety of children susceptible to harm from the effect of abuse and neglect, not on the custodial interests of the parent. People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005); People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

The purposes of the Colorado Children's Code are quite different from the purposes of the Criminal Code, and an amendment furthering the purposes of one cannot be deemed invalid on the ground that such legislation is contrary to the purposes of the other. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

The adoption of the Colorado Children's Code and the establishment of a juvenile court was based on a legislative conclusion that adjudication of issues arising from the conduct of young persons must focus on the protection and rehabilitation of such persons. But the Children's Code expressly recognizes the necessity of balancing the primary concern for protecting and nurturing young persons with concern for the safety of all members of society. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Consecutive commitments. Since the purposes of the Colorado Children's Code focus on the protection of society and the rehabilitation of the offender, such purposes may be fostered by the imposition of consecutive commitments. People in Interest of S.A.E., 724 P.2d 100 (Colo. App. 1986), overruled in S.G.W. v. People, 752 P.2d 86, (Colo. 1988).

State's interest relative to preventing delinquent children from becoming adult criminals is compelling. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

Prosecution of juveniles under municipal ordinance does not conflict with Colorado Children's Code and, although municipalities are not prohibited from adopting same procedures as Children's Code, municipalities are not required to follow such procedures. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Colorado Children's Code does not require that juvenile proceedings in municipal courts be civil in nature as Children's Code and ordinances of municipality on juvenile proceedings do not conflict. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Intent of general assembly that the Colorado Children's Code apply only to juvenile proceedings in juvenile court, and not to municipal court proceedings involving prosecution of juveniles under municipal ordinances. R.E.N.

v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Since a person under age 18 can only be charged with an offense in the manner permitted by the Colorado Children's Code, the county court had no jurisdiction to entertain or to dispose of the merits of the proceeding involving an offense alleged against a juvenile and was without authority to go further than merely dismissing the case without prejudice for lack of jurisdiction. People in Interest of C.O., 870 P.2d 1266 (Colo. App. 1994).

Public policy. The public policy of the state is to provide for a neglected and dependent child in a manner that will best serve his welfare and the interests of society. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974); People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

The juvenile system is premised on the concept that a more informal, simple, and speedy judicial setting will best serve the needs and welfare of juvenile defendants. The designs of the juvenile system, however, must be tempered with procedural rules that recognize the children who commit serious offenses may need to be treated differently than other juveniles. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

A parent has a fundamental liberty interest in the care, custody, and management of a child. However, that parental right to due process is subject to the power of the state to act in the child's best interest. People in Interest of M.H., 855 P.2d 15 (Colo. App. 1993).

Fundamental liberty interest in the care, custody, and management of a child not extended to stepparent. Absent substantial evidence that a stepparent stands in loco parentis to the child, there is no authority to extend a similar liberty interest to either a stepparent or a family unit created by the natural or adoptive parent and a stepparent. People ex rel. of E.S., 49 P.3d 1221 (Colo. App. 2002).

The state acts as parens patriae — sovereign guardian — to safeguard the interests of vulnerable children within the state. L.G. v. People, 890 P.2d 647 (Colo. 1995).

Termination of parental rights is drastic remedy in which a most serious interest of the parents is jeopardized. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Home care and guidance preferred. A neglected and dependent child's care and guidance should be preferably in his own home, so as to preserve and strengthen family ties. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Absent a showing of a causal relationship between such an environment and a serious threat to the emotional or physical stability of the child, public policy requires that the care and guidance of each child should remain with his parents and in his own home. People in Interest of D.L.R., 44 Colo. App. 327, 618 P.2d 687 (1980), rev'd on other grounds, 638 P.2d 39 (Colo. 1981).

As is maintenance of family ties. The general assembly has declared its preference for the maintenance of family ties whenever possible in subsection (1)(b). People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Under this code, parties are precluded from stipulating restrictions upon court's duty to protect best interests of child. In re People in Interest of A.R.S, 31 Colo. App. 268, 502 P.2d 92 (1972).

Applied in Gibson v. People, 44 Colo. 600, 99 P. 333 (1908); Cruz v. Morley, 77 Colo. 25, 234 P. 178 (1925); Johnson v. People, 170 Colo. 137, 459 P.2d 579 (1969); Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973); P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974); Dept. of Insts. ex rel. S.L.G. v. Bushnell, 195 Colo. 566, 579 P.2d 1168 (1978); People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980); Villareal v. Lopez, 44 Colo. App. 555, 619 P.2d 86 (1980); People in Interest of C.A.K., 628 P.2d 136 (Colo. App. 1980); People in Interest of E.A., 638 P.2d 278 (Colo. 1981); People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982); People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People v. Coyle, 654 P.2d 815 (Colo. 1982); People in Interest of M.H., 661 P.2d 1173 (Colo. 1983); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

19-1-103. Definitions. As used in this title or in the specified portion of this title, unless the context otherwise requires:

(1) (a) "Abuse" or "child abuse or neglect", as used in part 3 of article 3 of this title, means an act or omission in one of the following categories that threatens the health or welfare of a child:

(I) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained; the history given concerning such condition is at variance with the degree or type of such condition or death;

or the circumstances indicate that such condition may not be the product of an accidental occurrence;

(II) Any case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S.;

(III) Any case in which a child is a child in need of services because the child's parents, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take. The requirements of this subparagraph (III) shall be subject to the provisions of section 19-3-103.

(IV) Any case in which a child is subjected to emotional abuse. As used in this subparagraph (IV), "emotional abuse" means an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.

(V) Any act or omission described in section 19-3-102 (1) (a), (1) (b), or (1) (c);

(VI) Any case in which, in the presence of a child, or on the premises where a child is found, or where a child resides, a controlled substance, as defined in section 18-18-102 (5), C.R.S., is manufactured or attempted to be manufactured;

(VII) Any case in which a child tests positive at birth for either a schedule I controlled substance, as defined in section 18-18-203, C.R.S., or a schedule II controlled substance, as defined in section 18-18-204, C.R.S., unless the child tests positive for a schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed.

(b) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates including, but not limited to, accepted work-related practices of agricultural communities. Nothing in this subsection (1) shall refer to acts that could be construed to be a reasonable exercise of parental discipline or to acts reasonably necessary to subdue a child being taken into custody pursuant to section 19-2-502 that are performed by a peace officer, as described in section 16-2.5-101, C.R.S., acting in the good faith performance of the officer's duties.

(2) "Adjudication" means a determination by the court that it has been proven beyond a reasonable doubt to the trier of fact that the juvenile has committed a delinquent act or that a juvenile has pled guilty to committing a delinquent act. In addition, when a previous conviction must be pled and proven as an element of an offense or for purposes of sentence enhancement, "adjudication" means conviction.

(3) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition in dependency and neglect are supported by the evidence.

(4) "Adjudicatory trial" means a trial to determine whether the allegations of a petition in delinquency are supported by the evidence.

(5) "Administrative review" means a review conducted by the state department of human services that is open to the participation of the parents of the child and conducted by an administrative reviewer who is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(6) "Adoptee", as used in part 3 of article 5 of this title, means a person who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(6.5) (a) "Adoption record", as used in part 3 of article 5 of this title, means the following documents and information:

(I) The adoptee's original birth certificate and amended birth certificate;

(II) The final decree of adoption;

(III) Nonidentifying information, as defined in section 19-1-103 (80);

(IV) The final order of relinquishment; and

(V) The order of termination of parental rights.

(b) "Adoption record" shall not include pre-relinquishment counseling records, which records shall remain confidential.

(6.7) "Adoption triad" means the three parties involved in an adoption: The adoptee, the birth parent, and the adoptive parent.

(7) "Adoptive parent", as used in parts 3 and 4 of article 5 of this title, means an adult who has become a parent of a minor through the legal process of adoption.

(8) (a) "Adult" means a person eighteen years of age or older; except that any person eighteen years of age or older who is under the continuing jurisdiction of the court, who is before the court for an alleged delinquent act committed prior to the person's eighteenth birthday, or concerning whom a petition has been filed for the person's adoption other than under this title shall be referred to as a juvenile.

(b) (Deleted by amendment, L. 97, p. 1167, § 14, effective July 1, 1997.)

(9) "Adult adoptee", as used in parts 3 and 4 of article 5 of this title, means an individual who is eighteen years of age or older and who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(10) "Appropriate treatment plan", as used in section 19-3-508 (1) (e), means a treatment plan approved by the court that is reasonably calculated to render the particular respondent fit to provide adequate parenting to the child within a reasonable time and that relates to the child's needs.

(10.5) "Assessment center for children", as used in sections 19-1-303 and 19-1-304, means a multi-disciplinary, community-based center that provides services to children and their families, including, but not limited to, detention screening, case management, and therapeutic intervention relating to delinquency, abuse or neglect, family conflict, and truancy.

(11) "Assessment instrument" means an objective tool used to collect pertinent information regarding a juvenile taken into temporary custody in order to determine the appropriate level of security, supervision, and services pending adjudication.

(12) "Basic identification information", as used in article 2 of this title, means the name, place and date of birth, last-known address, social security number, occupation and address of employment, last school attended, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

(13) "Biological parent" or "birth parent", as used in part 3 of article 5 of this title, means a parent, by birth, of an adopted person.

(14) "Biological sibling", as used in part 3 of article 5 of this title, means a sibling, by birth, of an adopted person. "Biological sibling", as used in article 3 and article 5 of this title, for purposes of the definition of sibling group, as defined in subsection (98.5) of this section, means a brother, sister, or half-sibling of a child who is being placed in foster care or being placed for adoption.

(15) "Birth parents", as used in part 4 of article 5 of this title, means genetic, biological, or natural parents whose rights were voluntarily or involuntarily terminated by a court or otherwise. "Birth parents" includes a man who is the parent of a child as established in accordance with the provisions of the "Uniform Parentage Act", article 4 of this title, prior to the termination of parental rights.

(16) "Board", as used in article 3.5 of this title, means the Colorado children's trust fund board created in section 19-3.5-104.

(16.5) "Case management purposes", as used in section 19-1-303, means assessments, evaluations, treatment, education, proper disposition or placement of the child, interagency coordination, and other services that are incidental to the administration of the program and in the best interests of the child.

(17) "Chief justice", as used in part 3 of article 5 of this title, means the chief justice of the Colorado supreme court.

(18) "Child" means a person under eighteen years of age.

(19) "Child abuse", as used in article 3.5 of this title, means any act that reasonably may be construed to fall under the definition of abuse or child abuse or neglect in subsection (1) of this section.

(19.5) "Child advocacy center", as used in part 3 of article 3 of this title, means a center that provides a comprehensive multi-disciplinary team response to allegations of child abuse or neglect in a dedicated, child-friendly setting. The team response to allegations of child abuse or neglect includes, but is not limited to, technical assistance for forensic interviews, forensic medical examinations, mental health and related support services, consultation, training, and education.

(20) "Child care center" means a child care center licensed and approved pursuant to article 6 of title 26, C.R.S. If such facility is located in another state, it shall be designated

by the department of human services upon certification that no appropriate available space exists in a child care facility in this state and shall be licensed or approved as required by law in that state.

(21) "Child placement agency" means an agency licensed or approved pursuant to law. If such agency is located in another state, it shall be licensed or approved as required by law in that state.

(22) "Child protection team", as used in part 3 of article 3 of this title, means a multidisciplinary team consisting, where possible, of a physician, a representative of the juvenile court or the district court with juvenile jurisdiction, a representative of a local law enforcement agency, a representative of the county department, a representative of a mental health clinic, a representative of a county, district, or municipal public health agency, an attorney, a representative of a public school district, and one or more representatives of the lay community, at least one of whom shall be a person who serves as a foster parent in the county. Each public agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each public agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian ad litem for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three persons. When any racial, ethnic, or linguistic minority group constitutes a significant portion of the population of the jurisdiction of the child protection team, a member of each such minority group shall serve as an additional lay member of the child protection team. At least one of the preceding members of the team shall be chosen on the basis of representing low-income families. The role of the child protection team shall be advisory only.

(23) "Citizen review panel", as used in section 19-3-211, means the panel created in a county by the board of county commissioners or in a city and county by the city council that shall review and make recommendations regarding grievances referred to the panel by the county director pursuant to the conflict resolution process.

(24) "Commit", as used in article 2 of this title, means to transfer legal custody.

(24.5) "Community placement" means the placement of a child for whom the state department of human services or a county department has placement and care responsibility pursuant to article 2 or 3 of this title in any licensed or certified twenty-four-hour, non-secure, care and treatment facility away from the child's parent or guardian. "Community placement" includes, but is not limited to, placement in a foster care home, group home, residential child care facility, or residential treatment facility.

(25) "Complainant", as used in section 19-3-211, means any person who was the subject of an investigation of a report of child abuse or neglect or any parent, guardian, or legal custodian of a child who is the subject of a report of child abuse or neglect and brings a grievance against a county department in accordance with the provisions of section 19-3-211.

(26) "Confidential intermediary", as used in part 3 of article 5 of this title, means a person twenty-one years of age or older who has completed a training program for confidential intermediaries that meets the standards set forth by the commission pursuant to section 19-5-303 and who is authorized to inspect confidential relinquishment and adoption records at the request of an adult adoptee, adoptive parent, biological parent, or biological sibling.

(27) "Confirmed", as used in part 3 of article 3 of this title, means any report made pursuant to article 3 of this title that is found by a county department, law enforcement agency, or entity authorized to investigate institutional abuse to be supported by a preponderance of the evidence.

(28) "Consent", as used in part 3 of article 5 of this title, means voluntary, informed, written consent. When used in the context of confidential intermediaries, "consent" always shall be preceded by an explanation that consent permits the confidential intermediary to arrange a personal contact among biological relatives. "Consent" may also mean the agreement for contact or disclosure of records by any of the parties identified in section 19-5-304 (2) as a result of an inquiry by a confidential intermediary pursuant to section 19-5-304.

(28.5) "Consent form", as used in section 19-5-305 (3), means a verified written statement signed by an adult adoptee or an adult adoptee's consenting birth parent or an adoptive parent of a minor adoptee that has been notarized and that authorizes the release of adoption records or identifying information, to the extent available, by a licensed child placement agency.

(28.6) "Contact information" means information supplied voluntarily by a birth parent on a contact preference form, including the name of the birth parent at the time of relinquishment of the adoptee; the alias, if any, used at the time of relinquishment of the adoptee; and the current name, current address, and current telephone number of the birth parent.

(28.7) "Contact preference form" means a written statement signed by a birth parent indicating whether the birth parent prefers future contact with an adult adoptee, an adult descendant of the adoptee, or a legal representative of the adoptee or the descendant and, if contact is preferred, whether the contact should be through a confidential intermediary or a designated employee of a child placement agency. A contact preference form includes an option for a birth parent to authorize the release of an original birth certificate.

(29) "Continuously available", as used in section 19-3-308 (4), means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the county department or to have such arrangements made through agreements with local law enforcement agencies.

(29.5) Repealed.

(30) "Cost of care" means the cost to the department or the county for a child placed out of the home or charged with the custody of the juvenile for providing room, board, clothing, education, medical care, and other normal living expenses for a child placed out of the home or to a juvenile sentenced to a placement out of the home, as determined by the court. As used in this title, "cost of care" also includes any costs associated with maintenance of a juvenile in a home detention program, supervision of probation when the juvenile is granted probation, or supervision of parole when the juvenile is placed on parole.

(31) "Counsel" means an attorney-at-law who acts as a person's legal advisor or who represents a person in court.

(31.5) "County attorney" means the office of the county attorney or city attorney representing a county or a city and county and includes the attorneys employed or retained by such county or city and county.

(32) (a) "County department", as used in this article and part 2, part 3, and part 7 of article 3 of this title and part 2 of article 5 of this title, means the county or district department of social services.

(b) "County department", as used in section 19-3-211 and in article 3.3 of this title, means a county or a city and county department of social services.

(33) "County director", as used in section 19-3-211 and part 3 of article 3 of this title, means the county director or district director appointed pursuant to section 26-1-117, C.R.S.

(34) "Court", as used in part 3 of article 5 of this title, means any court of record with jurisdiction over the matter at issue.

(34.3) "Court-appointed special advocate" or "CASA volunteer" means a volunteer appointed by a court pursuant to the provisions of part 2 of this article to assist in advocacy for children.

(34.5) "Court-appointed special advocate program" or "CASA program" means a program established pursuant to the provisions of part 2 of this article.

(34.6) "Criminal justice agency", as used in section 19-1-303, shall have the same meaning as set forth in section 24-72-302 (3), C.R.S.

(34.7) "Custodial adoption", as used in part 2 of article 5 of this title, means an adoption of a child by any person and such person's spouse, as required under section 19-5-202 (3), who:

(a) Has been awarded custody or allocated parental responsibilities by a court of law in a dissolution of marriage, custody or allocation of parental responsibilities proceeding, or has been awarded guardianship of the child by a court of law in a probate action, such as pursuant to part 2 of article 14 of title 15; and

(b) Has had physical custody of the child for a period of one year or more.

(35) "Custodian" means a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court.

(36) "Delinquent act", as used in article 2 of this title, means a violation of any statute, ordinance, or order enumerated in section 19-2-104 (1) (a). If a juvenile is alleged to have committed or is found guilty of a delinquent act, the classification and degree of the offense shall be determined by the statute, ordinance, or order that the petition alleges was violated.

(37) "Department", as used in article 5 of this title, means the department of human services.

(38) "Deprivation of custody" means the transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency, or institution.

(39) "Designated adoption" means an adoption in which:

(a) The birth parent or parents designate a specific applicant with whom they wish to place their child for purposes of adoption; and

(b) The anonymity requirements of section 19-1-309 are waived.

(40) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

(40.5) "Determinate period", as used in article 2 of this title, means that the department of human services may not transfer legal or physical custody of a juvenile until the juvenile has completed the period of commitment imposed by the court, unless otherwise ordered by the court; except that the department may release the juvenile on parole prior to completion of the determinate period, as provided in section 19-2-1002.

(41) "Diagnostic and evaluation center", as used in article 2 of this title, means a facility for the examination and study of persons committed to the custody of the department of human services.

(42) "Director", as used in section 19-2-303, means the executive director of the department of public safety.

(43) "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child who is neglected or dependent. Such hearing may be part of the proceeding that includes the adjudicatory hearing, or it may be held at a time subsequent to the adjudicatory hearing.

(44) "Diversion" means a decision made by a person with authority or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing individually designed services by a specific program. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system. Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2-512 or at the postadjudication level as an adjunct to probation services following an adjudicatory hearing pursuant to section 19-3-505 or a disposition as a part of sentencing pursuant to section 19-2-907. "Services", as used in this subsection (44), includes but is not limited to diagnostic needs assessment, restitution programs, community service, job training and placement, specialized tutoring, constructive recreational activities, general counseling and counseling during a crisis situation, and follow-up activities. Services may include restorative justice practices as defined in section 18-1-901 (3) (o.5), C.R.S., as requested by the victim, after being informed about restorative justice practices pursuant to section 24-4.1-303 (11) (g), C.R.S., and as deemed suitable by the probation department or a designated restorative justice practices facilitator. Such practices may include victim-offender conferences, if requested by the victim. Restorative justice practices shall be conducted by facilitators recommended by the district attorney.

(44.5) "Donor", as used in section 19-4-106, means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. "Donor" does not include a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife.

(45) "Emancipated juvenile", as used in section 19-2-511, means a juvenile over fifteen years of age and under eighteen years of age who has, with the real or apparent assent of the juvenile's parents, demonstrated independence from the juvenile's parents in matters

of care, custody, and earnings. The term may include, but shall not be limited to, any such juvenile who has the sole responsibility for the juvenile's own support, who is married, or who is in the military.

(46) (Deleted by amendment, L. 96, p. 1684, § 12, effective January 1, 1997.)

(47) (a) "Estate", as used in section 19-2-114, means any tangible or intangible properties, real or personal, belonging to or due to a person, including income or payments to such person from previously earned salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source whatsoever except federal benefits of any kind.

(b) (I) Real property that is held in joint ownership or ownership in common with the juvenile's spouse, while being used and occupied by the spouse as a place of residence, shall not be considered a part of the estate of the juvenile for the purposes of section 19-2-114.

(II) Real property that is held by the juvenile's parent, while being used and occupied by such parent as a place of residence, shall not be considered a part of the estate of the parent for the purposes of section 19-2-114.

(47.5) "Executive director", as used in article 3.3 of this title, means the executive director of the department of human services.

(48) "Expungement", as used in section 19-1-306, means the designation of juvenile delinquency records whereby such records are deemed never to have existed.

(49) "Family child care home" means a family child care home licensed and approved pursuant to article 6 of title 26, C.R.S. If such facility is located in another state, it shall be designated by the department of human services upon certification that no appropriate available space exists in a facility in this state and shall be licensed or approved as required by law in that state.

(50) (Deleted by amendment, L. 96, p. 1684, § 12, effective January 1, 1997.)

(51) "Fire investigator" means a person who:

(a) Is an officer or member of a fire department, fire protection district, or fire fighting agency of the state or any of its political subdivisions;

(b) Is engaged in conducting or is present for the purpose of engaging in the conduct of a fire investigation; and

(c) Is either a volunteer or is compensated for services rendered by the person.

(51.3) "Foster care" means the placement of a child into the legal custody or legal authority of a county department of social services for physical placement of the child in a kinship care placement or certified or licensed facility or the physical placement of a juvenile committed to the custody of the state department of human services into a community placement.

(51.5) "Foster care home" means a foster care home certified pursuant to article 6 of title 26, C.R.S.

(52) "Gang", as used in sections 19-2-205 and 19-2-508, means a group of three or more individuals with a common interest, bond, or activity, characterized by criminal or delinquent conduct, engaged in either collectively or individually.

(53) "Good faith mistake", as used in section 19-2-803, means a reasonable error of judgment concerning the existence of facts or law that, if true, would be sufficient to constitute probable cause.

(54) "Governing body", as used in section 19-3-211, means the board of county commissioners of a county or the city council of a city and county.

(55) "Governmental unit", as used in section 19-2-303, means any county, city and county, city, town, judicial district attorney office, or school district.

(56) (a) "Grandparent" means a person who is the parent of a child's father or mother, who is related to the child by blood, in whole or by half, adoption, or marriage.

(b) "Grandparent", as used in sections 19-1-117 and 19-1-117.5, has the same meaning as set forth in paragraph (a) of this subsection (56); except that "grandparent" does not include the parent of a child's legal father or mother whose parental rights have been terminated in accordance with sections 19-5-101 and 19-1-104 (1) (d).

(57) "Grievance", as used in section 19-3-211, means a dispute between a complainant and a county department concerning the conduct of county department personnel in performing their duties pursuant to article 3 of this title.

(58) "Group care facilities and homes" means places other than foster family care homes providing care for small groups of children that are licensed as provided in article 6 of title 26, C.R.S., or meet the requirements of section 27-10.5-109, C.R.S.

(59) "Guardian ad litem" means a person appointed by a court to act in the best interests of a person whom the person appointed is representing in proceedings under this title and who, if appointed to represent a person in a dependency and neglect proceeding under article 3 of this title, shall be an attorney-at-law licensed to practice in Colorado.

(60) "Guardianship of the person" means the duty and authority vested by court action to make major decisions affecting a child, including, but not limited to:

(a) The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(b) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(c) The authority to consent to the adoption of a child when the parent-child legal relationship has been terminated by judicial decree; and

(d) The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

(61) "Habitual juvenile offender", as used in section 19-2-517, means a juvenile offender who has previously been twice adjudicated a juvenile delinquent for separate delinquent acts, arising out of separate and distinct criminal episodes, that constitute felonies.

(61.5) "Half-sibling" shall have the same meaning as biological sibling provided in subsection (14) of this section.

(62) "Halfway house", as used in article 2 of this title, means a group care facility for juveniles who have been placed on probation or parole under the terms of this title.

(63) "Identifying" means giving, sharing, or obtaining information.

(63.5) "Identifying information", as used in section 19-5-305 (3), means copies of any adoption records, as that term is defined in subsection (6.5) of this section, that are in the possession of the child placement agency. "Identifying information" also includes the name of the adoptee before placement in adoption; the name and address of each consenting birth parent as they appear in the birth records; the current name, address, and telephone number of the adult adoptee; and the current name, address, and telephone number of each consenting birth parent to the extent such information is available to the child placement agency.

(64) "Imminent placement out of the home", as used in section 19-1-116 (2), means that without intercession the child will be placed out of the home immediately.

(65) "Independent living" means a form of placement out of the home arranged and supervised by the county department of social services wherein the child is established in a living situation designed to promote and lead to the child's emancipation. Independent living shall only follow some other form of placement out of the home.

(65.3) "Indian child" means an unmarried person who is younger than eighteen years of age and who is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.

(65.5) "Indian child's tribe" means:

(a) The Indian tribe in which an Indian child is a member or eligible for membership; or

(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.

(65.7) "Indian tribe" means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the federal governmental services provided to Indians because of their status as Indians.

(66) "Institutional abuse", as used in part 3 of article 3 of this title, means any case of abuse, as defined in subsection (1) of this section, that occurs in any public or private facility in the state that provides child care out of the home, supervision, or maintenance.

"Facility" includes, but is not limited to, family child care homes, foster care homes, and any other facility subject to the Colorado "Child Care Licensing Act" and described in section 26-6-102, C.R.S. "Institutional abuse" shall not include abuse that occurs in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides extended day services, abuse that occurs while such services are provided shall be institutional abuse.

(67) "Intrafamilial abuse", as used in part 3 of article 3 of this title, means any case of abuse, as defined in subsection (1) of this section, that occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent, as defined in subsection (101) of this section, or by any other person who resides in the child's home or who is regularly in the child's home for the purpose of exercising authority over or care for the child; except that "intrafamilial abuse" shall not include abuse by a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

(68) "Juvenile", as used in article 2 of this title, means a child as defined in subsection (18) of this section.

(69) "Juvenile community review board", as used in article 2 of this title, means any board appointed by a board of county commissioners for the purpose of reviewing community placements under article 2 of this title. The board, if practicable, shall include but not be limited to a representative from a county department of social services, a local school district, a local law enforcement agency, a local probation department, a local bar association, the division of youth corrections, and private citizens.

(70) "Juvenile court" or "court" means the juvenile court of the city and county of Denver or the juvenile division of the district court outside of the city and county of Denver.

(71) "Juvenile delinquent", as used in article 2 of this title, means a juvenile who has been found guilty of a delinquent act.

(71.5) "Kinship adoption", as used in part 2 of article 5 of this title, means an adoption of a child by a relative of the child and such relative's spouse, as required under section 19-5-202 (3), who:

(a) Is either a grandparent, brother, sister, half-sibling, aunt, uncle, or first cousin; and

(b) Has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title.

(72) "Law enforcement officer" means a peace officer, as described in section 16-2.5-101, C.R.S.

(73) (a) "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. "Legal custody" may be taken from a parent only by court action.

(b) For purposes of determining the residence of a child as provided in section 22-1-102 (2) (b), C.R.S., guardianship shall be in the person to whom legal custody has been granted by the court.

(73.5) (a) "Legal representative", as used in sections 19-5-304 and 19-5-305, means the person designated by a court to act on behalf of any person described in section 19-5-304 (1) (b) (I) or 19-5-305 (2).

(b) For purposes of the term "legal representative", as used in section 19-5-304 and 19-5-305 and as defined in paragraph (a) of this subsection (73.5), "legal guardian" shall not include a governmental entity of any foreign country from which a child has been adopted or any representative of such governmental entity.

(74) "Local law enforcement agency", as used in part 3 of article 3 of this title, means a police department in incorporated municipalities or the office of the county sheriff.

(75) "Locating" means engaging in the process of searching for or seeking out.

(76) "Mental health hospital placement prescreening" means a face-to-face mental health examination, conducted by a mental health professional, to determine whether a child should be placed in a facility for evaluation pursuant to section 27-65-105 or 27-65-106, C.R.S., and may include consultation with other mental health professionals and review of all available records on the child.

(77) "Mental health professional" means a person licensed to practice medicine or psychology in this state or any person on the staff of a facility designated by the executive director of the department of human services for seventy-two-hour treatment and evaluation authorized by the facility to do mental health hospital placement prescreenings and under the supervision of a person licensed to practice medicine or psychology in this state.

(77.5) "Need to know", as used in section 19-1-303, means agencies or individuals who need access to certain information for the care, treatment, supervision, or protection of a child.

(78) "Neglect", as used in part 3 of article 3 of this title, means acts that can reasonably be construed to fall under the definition of child abuse or neglect as defined in subsection (1) of this section.

(78.5) "Newborn child" means a child who is less than seventy-two hours old.

(79) "Nongovernmental agency", as used in section 19-2-303, means any person, private nonprofit agency, corporation, association, or other nongovernmental agency.

(80) "Nonidentifying information", as used in part 4 of article 5 of this title, means information that does not disclose the name, address, place of employment, or any other material information that would lead to the identification of the birth parents and that includes, but is not limited to, the following:

(a) The physical description of the birth parents;

(b) The educational background of the birth parents;

(c) The occupation of the birth parents;

(d) Genetic information about the birth family;

(e) Medical information about the adult adoptee's birth;

(f) Social information about the birth parents;

(g) The placement history of the adoptee.

(81) "Nonpublic agency interstate and foreign adoption", as used in section 19-5-205.5, means an interstate or foreign adoption that is handled by a private, licensed child placement agency.

(82) (a) "Parent" means either a natural parent of a child, as may be established pursuant to article 4 of this title, or a parent by adoption.

(b) "Parent", as used in sections 19-1-114, 19-2-514, and 19-2-515, includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. For the purposes of section 19-1-114, "parent" does not include a person whose parental rights have been terminated pursuant to the provisions of this title or the parent of an emancipated minor.

(83) (Deleted by amendment, L. 96, p. 1684, § 12, effective January 1, 1997.)

(83.5) "Permanency hearing" means a hearing in which the permanency plan for a child in foster care is determined by the court.

(84) "Physical custodian", as used in section 19-2-511, means a guardian, whether or not appointed by court order, with whom the juvenile has resided.

(85) "Placement out of the home" means placement for twenty-four-hour residential care in any facility or center operated or licensed by the department of human services, but the term does not include any placement that is paid for totally by private moneys or any placement in a home for the purposes of adoption in accordance with section 19-5-205. "Placement out of the home" may be voluntary or court-ordered. "Placement out of the home" includes independent living.

(85.5) (a) "Post-adoption record", as used in part 3 of article 5 of this title, means information contained in the files subsequent to the completion of an adoption proceeding.

(b) The post-adoption record may contain information concerning, but not limited to:

(I) The written inquiries from persons requesting access to records;

(II) The search efforts of the confidential intermediary;

(III) The response, if any, to those search efforts by the persons sought;

(IV) Any updated medical information gathered pursuant to part 3 of article 5 of this title; and

(V) Any personal identifying information concerning any persons subject to the provisions of part 3 of article 5 of this title.

(86) "Prevention program", as used in article 3.5 of this title, means a program of direct child abuse prevention services to a child, parent, or guardian and includes research or education programs related to the prevention of child abuse. Such a prevention program may be classified as a primary prevention program when it is available to the community on a voluntary basis and as a secondary prevention program when it is directed toward groups of individuals who have been identified as high risk.

(87) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in the child's home or is placed with a relative or other suitable person and supervision and assistance is provided by the court, department of human services, or other agency designated by the court.

(87.5) "Public adoption", as used in part 2 of article 5 of this title, means an adoption involving a child who is in the legal custody and guardianship of the county department of social services that has the right to consent to adoption for that child.

(88) (Deleted by amendment, L. 96, p. 1684, § 12, effective January 1, 1997.)

(89) "Reasonable efforts", as used in articles 1, 2, and 3 of this title, means the exercise of diligence and care throughout the state of Colorado for children who are in out-of-home placement, or are at imminent risk of out-of-home placement. In determining whether it is appropriate to provide, purchase, or develop the supportive and rehabilitative services that are required to prevent unnecessary placement of a child outside of a child's home or to foster the safe reunification of a child with a child's family, as described in section 19-3-208, or whether it is appropriate to find and finalize an alternative permanent plan for a child, and in making reasonable efforts, the child's health and safety shall be the paramount concern. Services provided by a county or city and county in accordance with section 19-3-208 are deemed to meet the reasonable effort standard described in this subsection (89). Nothing in this subsection (89) shall be construed to conflict with federal law.

(90) "Receiving center", as used in article 2 of this title, means a facility used to provide temporary detention and care for juveniles by the department of human services pending placement in a training school, camp, or other facility.

(91) "Recipient", as used in article 3.5 of this title, means and is limited to a nonprofit or public organization that receives a grant from the trust fund created in section 19-3.5-106.

(91.5) "Record", as used in section 19-4-106, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(91.7) "Register of actions" means those portions of the electronic case management system necessary to carry out a statutory purpose or the duties of a court appointment.

(92) "Residential community placement", as used in article 2 of this title, means any placement for residential purposes permitted under this title except in an institutional facility directly operated by, or a secure facility under contract with, the department of human services and except while a juvenile is under the jurisdiction of the juvenile parole board.

(93) "Residual parental rights and responsibilities", as used in article 3 of this title, means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable parenting time unless restricted by the court, and the right to determine the child's religious affiliation.

(94) "Responsible person", as used in part 3 of article 3 of this title, means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(94.1) "Restorative justice" means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences

recommended by the participants may include, but need not be limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

(94.2) "Reunited parties", as used in section 19-5-305, means any two persons who qualify as and meet any specified requirements for parties under the list of individuals in section 19-5-304 (1) (b) (I).

(94.3) "School", as used in sections 19-1-303 and 19-1-304, means a public or parochial or other nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one to twelve. "Basic academic education" has the same meaning as set forth in section 22-33-104 (2) (b), C.R.S.

(94.5) "Screening team" means the person or persons designated, pursuant to rule 3.7 of the Colorado rules of juvenile procedure, by the chief judge in each judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court to make recommendations to the juvenile court concerning whether a juvenile taken into temporary custody should be released or admitted to a detention or shelter facility pursuant to section 19-2-508.

(95) "Sentencing hearing", as used in article 2 of this title, means a hearing to determine what sentence shall be imposed on a juvenile delinquent or what other order of disposition shall be made concerning a juvenile delinquent, including commitment. Such hearing may be part of the proceeding that includes the adjudicatory trial, or it may be held at a time subsequent to the adjudicatory trial.

(96) "Services", as used in section 19-2-303, may include, but is not limited to, provision of diagnostic needs assessment, general counseling and counseling during a crisis situation, specialized tutoring, job training and placement, restitution programs, community service, constructive recreational activities, day reporting and day treatment programs, and follow-up activities.

(97) "Sexual conduct", as used in section 19-3-304 (2.5), means any of the following:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sexual sadomasochistic abuse.

(98) "Shelter" means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.

(98.5) "Sibling group", as used in article 3 and article 5 of this title, means biological siblings who have been raised together or have lived together.

(99) "Special county attorney", as used in article 3 of this title, means an attorney hired by a county attorney or city attorney of a city and county or hired by a county department of social services with the concurrence of the county attorney or city attorney of a city and county to prosecute dependency and neglect cases.

(100) "Special respondent", as used in article 3 of this title, means any person who is not a parent, guardian, or legal custodian and who is involuntarily joined as a party in a dependency or neglect proceeding for the limited purposes of protective orders or inclusion in a treatment plan.

(101) "Spousal equivalent" means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent.

(101.5) "Staff secure facility" means a group facility or home at which each juvenile is continuously under staff supervision and at which all services, including but not limited to education and treatment, are provided on site. A staff secure facility may or may not be a locked facility.

(101.7) "Standardized mental illness screening" means the mental illness screening conducted using the juvenile standardized screening instruments and the procedures adopted pursuant to section 16-11.9-102, C.R.S.

(102) "State board", as used in part 3 of article 3 of this title, means the state board of human services.

(103) "State department", as used in section 19-3-211, part 3 of article 3 of this title, and article 3.3 of this title, means the department of human services created by section 24-1-120, C.R.S.

(103.5) "State registrar" means the state registrar of vital statistics in the department of public health and environment.

(103.7) "Status offense" shall have the same meaning as is defined in federal law in 28 CFR 31.304, as amended.

(104) "Stepparent" means a person who is married to a parent of a child but who has not adopted the child.

(105) "Technical violation", as used in section 19-2-803, means a reasonable, good faith reliance upon a statute that is later ruled unconstitutional, a warrant that is later invalidated due to a good faith mistake, or a court precedent that is later overruled.

(106) "Temporary holding facility" means an area used for the temporary holding of a child from the time that the child is taken into temporary custody until a detention hearing is held, if it has been determined that the child requires a staff-secure setting. Such an area must be separated by sight and sound from any area that houses adult offenders.

(107) "Termination of the parent-child legal relationship", as used in articles 3 and 5 of this title, means the permanent elimination by court order of all parental rights and duties, including residual parental rights and responsibilities, as provided in section 19-3-608.

(108) "Third-party abuse", as used in part 3 of article 3 of this title, means a case in which a child is subjected to abuse, as defined in subsection (1) of this section, by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, as defined in subsection (101) of this section, or any other person not included in the definition of intrafamilial abuse, as defined in subsection (67) of this section.

(109) "Training school", as used in article 2 of this title, means an institution providing care, education, treatment, and rehabilitation for juveniles in a closed setting and includes a regional center established in part 3 of article 10.5 of title 27, C.R.S.

(110) "Trust fund", as used in article 3.5 of this title, means the Colorado children's trust fund created in section 19-3.5-106.

(111) "Unfounded report", as used in part 3 of article 3 of this title, means any report made pursuant to article 3 of this title that is not supported by a preponderance of the evidence.

(111.5) "Updated medical history statement" means a written narrative statement dated and signed by a birth parent about the medical history of the birth parent or other biological relatives of the adoptee that can be voluntarily submitted by the birth parent to the state registrar for future disclosure to the birth parent's adult child who is an adult adoptee or an adult descendant of the adoptee or legal representative of such person in accordance with the provisions of section 19-5-305 (1.5).

(112) "Victim", as used in article 2 of this title, means the party immediately and directly aggrieved by the juvenile, that party's spouse, the party's parent, sibling, or child who is living with the party, a victim compensation board that has paid a victim compensation claim, a person or entity who has suffered losses because of a contractual relationship with such party, including, but not limited to, an insurer, or because of liability under section 14-6-110, C.R.S., or, in the absence of any of the above, the state.

Source: L. 87: Entire title R&RE, p. 696, § 1, effective October 1. **L. 88:** (11.5) added, p. 748, § 1, effective March 18; (3) amended, p. 741, § 1, effective July 1; (3.5) added, p. 750, § 1, effective July 1. **L. 89:** (27) added, p. 926, § 1, effective April 23. **L. 90:** (9.5)(b) amended, p. 1011, § 3, effective July 1. **L. 91:** (12.5) added, p. 263, § 5, effective May 31. **L. 92:** (2.5) added, p. 220, § 2, effective July 1. **L. 93:** (22) amended, p. 1134, § 64, effective July 1, 1994. **L. 94:** (12.3) added, p. 910, § 5, effective April 28; (2.5), (5), (12), (20), and (23) amended, p. 2658, § 144, effective July 1. **L. 96:** Entire section R&RE, p. 68, § 1, effective March 20; (34.3) and (34.5) added, p. 1089, § 1, effective May 23; (49) amended and (51.5) added, p. 264, § 13, effective July 1; (66) amended, p. 265, § 15, effective July 1; (1)(b), (2), (12), (30), (36), (44), (45), (46), (47), (50), (52), (53), (61), (69), (82)(b), (83), (84), (88), (92), (95), (96), and (105) amended and (40.5), (94.5), and (101.5) added, p. 1684, § 12, effective January 1, 1997; (48) amended and (16.5) and (77.5) added,

p. 1174, § 10, effective January 1, 1997; (112) added, p. 1783, § 12, effective January 1, 1997. **L. 97:** (1), (23), (25), and (57) amended, p. 1431, § 6, effective July 1; (8) and (37) amended and (61.5) added, p. 1167, § 14, effective July 1; (32)(a) amended, p. 150, § 2, effective July 1. **L. 98:** (51.3) added and (89) amended, p. 1417, § 2, effective July 1; (82)(b) amended, p. 1404, § 60, effective February 1, 1999. **L. 99:** (87.5) added, p. 1025, § 6, effective May 29; (34.7) and (71.5) added and (107) amended, pp. 1061, 1062, §§ 1, 2, effective June 1; (6.5), (28.5), (63.5), and (85.5) added and (28) amended, p. 1129, § 1, effective July 1; (24.5) added, p. 908, § 2, effective July 1; (112) amended, p. 624, § 21, effective August 4. **L. 2000:** (10.5), (34.6), and (94.3) added, p. 320, § 7, effective April 7; (29.5) added, p. 1723, § 6, effective June 1; (94.3) added, p. 1965, § 9, effective June 2; (14) and (32)(a) amended and (98.5) added, p. 474, § 1, effective July 1; (28.5) and (63.5) amended and (73.5) and (94.2) added, p. 1367, § 1, effective July 1. **L. 2001:** (5) and (89) amended and (83.5) added, p. 841, § 2, effective June 1; (1)(b) and (27) amended, p. 853, § 1, effective July 1. **L. 2002:** (1)(a)(II) amended, p. 568, § 1, effective May 24; (76) and (77) amended and (101.7) added, p. 574, § 4, effective May 24; (65.3), (65.5), and (65.7) added, p. 783, § 2, effective May 30; (1)(a)(II) amended, p. 1192, § 43, effective July 1; (1)(a)(II) amended, p. 1592, § 29, effective July 1. **L. 2003:** (48) amended, p. 1991, § 32, effective May 22; (1)(a) amended, p. 819, § 1, effective July 1; (44.5) and (91.5) added, p. 1266, § 54, effective July 1; (1)(b) and (72) amended, pp. 1622, 1619, §§ 36, 28, effective August 6; (29.5) repealed, p. 1401, § 5, effective January 1, 2004. **L. 2004:** (19.5) added, p. 807, § 2, effective May 21; (78.5) added, p. 430, § 3, effective July 1. **L. 2005:** (1)(a)(VII) added, p. 587, § 1, effective July 1; (6.7), (28.6), (28.7), (103.5), and (111.5) added and (9) and (13) amended, p. 991, § 3, effective July 1. **L. 2006:** (103.7) added and (106) amended, p. 256, § 1, effective March 31; (51.3) amended, p. 507, § 1, effective April 18. **L. 2007:** (30) amended, p. 1506, § 2, effective May 31. **L. 2008:** (44) amended and (94.1) added, p. 225, § 1, effective March 31; (31.5) and (91.7) added, p. 1241, § 2, effective August 5. **L. 2010:** (76) amended, (SB 10-175), ch. 188, p. 788, § 36, effective April 29; (32) and (103) amended and (47.5) added, (SB 10-171), ch. 225, p. 981, § 2, effective May 14; (22) amended, (HB 10-1422), ch. 419, p. 2074, § 34, effective August 11. **L. 2011:** (44) amended, (HB 11-1032), ch. 296, p. 1404, § 9, effective August 10.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 96-1006 and House Bill 96-1019 were harmonized. Subsection (66) was originally numbered as section 19-3-303 (4.5), and the amendments to it in House Bill 96-1006 were harmonized with subsection (66) as it appears in this section.

(3) Amendments to subsection (94.3) by House Bill 00-1119 and Senate Bill 00-133 were harmonized.

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (24.5), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending subsections (5) and (89) and enacting subsection (83.5), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2002 act enacting subsections (65.3), (65.5), and (65.7), see section 1 of chapter 217, Session Laws of Colorado 2002. For the legislative declaration contained in the 2003 act repealing subsection (29.5), see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration contained in the 2004 act enacting subsection (78.5), see section 1 of chapter 140, Session Laws of Colorado 2004. For the legislative declaration contained in the 2007 act amending subsection (30), see section 1 of chapter 351, Session Laws of Colorado 2007.

ANNOTATION

I. General Consideration.
II. Specific Definitions.
A. Abuse.
B. Adjudication.
C. Appropriate Treatment Plan.
D. Child.
E. Delinquent Child.
F. Dependency.
G. Emancipated Juvenile.
H. Grandparent.
I. Guardian Ad Litem.
J. Independent Living.
K. Placement Out of the Home.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Towards a More Practical Central Registry", see 51 Den. L.J. 509 (1974). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (August 2004). For article, "Family Law and Juvenile Delinquency", see 37 Colo. Law. 61 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section not unconstitutionally vague. This section is not so vague and uncertain that it fails to meet the constitutional requirements for statutory definiteness. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747, appeal dismissed for want of substantial federal question sub nom. J.K.S. v. Colo., 444 U.S. 987, 100 S. Ct. 515, 62 L. Ed.2d 416 (1979).

Parent-child relationship constitutionally protected. The parent-child relationship finds protection in both the due process and equal protection clauses of the fourteenth amendment, and parents have a fundamental interest in maintaining this legal relationship with their natural children. Termination of the parent-child relationship divests the parent and the child of all legal rights and obligations with respect to each other. For this reason, the power of the state to sever parental ties should be exercised with extreme caution. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Proceedings under this title are not criminal or penal, but protective, and, in so far as may be, those in charge of prosecution should not make use of instrumentalities or terms that are peculiarly adapted to prosecutions for misdemeanors or crimes as such. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Guardian includes persons vested by court action with duty and authority to make major decisions affecting a child. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

Colorado Children's Code does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Legal custodian is an interested party to delinquency action. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

Child's legal custodian stands in loco parentis to child, and is one who assumes the status and obligations of a parent without the formality of an adoption proceeding. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

Termination of loco parentis status. One standing in loco parentis may at his election be relieved of that status and the attendant obligations at any time upon petition to the court. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

"Termination" of the parent-child legal relationship includes the elimination of any right of continued visitation between parent and child, including such rights provided in a court order. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Fact that state department of institutions was vested with right to control an individual incident to its legal custody of that person is not per se determinative of the question of whether the person was a member of his father's household for purposes of the "family car doctrine". Hasegawa v. Day, 684 P.2d 936 (Colo. App. 1983), rev'd on other grounds sub nom. Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992).

"Order". This section does not define "order" as that word is used in § 19-2-103 (6)(a). However, court order has been broadly defined in case law as any direction of a court not contained or included in a judgment. Hence, a directive issued by a juvenile court judge to a director of a juvenile detention center and warden of a county jail defining standards for placing a juvenile in the county jail was an order satisfying the requirements of § 19-2-103 (6)(a). C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

For case construing "child in need of supervision", see People in Interest of D.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Petition in dependency cannot be converted into adoption proceeding, and legal custody, unlike adoption, is not meant to create a permanent status. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

"Juvenile court" or "court", as defined in former subsection (17) (now subsection (70)) of this section, means juvenile court of Denver or the juvenile division of any district court outside of Denver and does not include municipal courts. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

In a dispute between parents, the factors enumerated in § 14-10-124 (1.5) may be considered in determining the best interests of the child. People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part and rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

"Physical custodian" is only responsible for meeting a child's needs, unlike a legal custodian who stands in loco parentis to a child. People v. Legler, 969 P.2d 691 (Colo. 1998).

Person not a custodian who has not been providing shelter, food, clothing, or care for the juvenile at the time of the arrest, has not seen or heard from the juvenile in over two months, and has refused to allow juvenile to return to her home. People v. Legler, 969 P.2d 691 (Colo. 1998).

Questions concerning a child's health and safety are purview of trial court, which retains ultimate decision-making authority in the case. The trial court itself must make decisions regarding visitation and may not delegate this function to third parties. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

Applied in People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979); People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979); People v. L.A., 199 Colo. 390, 609 P.2d 116 (1980); People in Interest of G.L., 631 P.2d 1118 (Colo. 1981); People v. R.V., 635 P.2d 892 (Colo. 1981); Hesseltine v. United States, 538 F. Supp. 1003 (D. Colo. 1982); People v. Mann, 646 P.2d 352 (Colo. 1982); McCall v. Dist. Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982); J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982); People in Interest C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982); People in Interest of C.R.B., 662 P.2d 198 (Colo. App. 1983); City & County of Denver v. Dist. Court, 675 P.2d 312 (Colo. 1984); People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

II. SPECIFIC DEFINITIONS.

A. Abuse.

The purpose behind the definition of abuse in the reporting section is to encourage persons to report any suspected child abuse. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

And it is thus much more liberal than a definition of abuse which would be used to support an adjudication that a child is neglected or dependent. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

The applicability of the definition of "abuse" is limited to the statutory provisions on reporting child abuse. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

Question of fact. Where, in a neglect or dependency proceeding, it is shown that a child has sustained a nonaccidental injury resulting from an instance of parent-administered corporal punishment, the reasonableness of that punishment is a question to be decided by the trier of fact. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

Where instruction on definition of abuse improper. Where it is contended that the child is dependent or neglected because of injuries resulting from the intentional infliction of corporal punishment, an instruction on the definition of "abuse" in this section is improper because it includes both unexplained and nonaccidental injury, and such an instruction would tend only to confuse the jury. People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

Where no evidence was presented that child suffered bruising and child could not be ruled to have become a child in need of services as a result of subject's actions of requiring the child, a resident at an institution for juvenile offenders, to remove his clothing as punishment for his disruptive actions, subject's actions cannot be described as child abuse. Wilson v. State Dept. of Human Servs., 969 P.2d 770 (Colo. App. 1998).

Where evidence showed that mother allowed the six-year-old child to go on a 26-day road trip with stepfather and allowed the stepfather to spank the child during that road trip and at home, which spankings became increasingly severe, evidence was sufficient to support jury finding that the child was dependent and neglected. People ex rel. of E.S., 49 P.3d 1221 (Colo. App. 2002).

Applied in People v. Jennings, 641 P.2d 276 (Colo. 1982).

B. Adjudication.

Definition of "adjudication" specifically requires that the juvenile has committed a delinquent act or that the juvenile has pled guilty to committing a delinquent act. Gilmore v. Concerned Parents of Pueblo, 28 P.3d 963 (Colo. App. 2000), aff'd on other grounds, 47 P.3d 311 (Colo. 2002).

C. Appropriate Treatment Plan.

The appropriateness of a treatment plan must be measured by its likelihood of success in reuniting the family and must be assessed in light of the facts existing at the time of its adoption. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People in Interest of R.J.A., 994 P.2d 470 (Colo. App. 1999); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002); People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

It is because it is the parent's responsibility to assure compliance with and success of a treatment plan that the appropriateness of a treatment plan is not nullified by its ultimate failure to rehabilitate a parent. People in the Interest of A.H., 736 P.2d 425 (Colo. App. 1987); People in Interest of R.J.A., 994 P.2d 470 (Colo. App. 1999); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002).

The purpose of a treatment plan is to preserve the parent-child legal relationship by assisting the parent in overcoming the problems that required intervention into the family. People ex rel. D.G., 140 P.3d 299 (Colo. App. 2006).

D. Child.

Definition of "child" to include unborn child is constitutional. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

It is liberally construed. The definition of a "child" as a person under 18 years of age unless the context otherwise requires manifests the intention of the general assembly that the word should be construed liberally to aid in implementing the purposes of the Colorado Children's Code. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

"Child" includes human being during pregnancy. No violence is done to the orderly process of the rational mind by letting the word "child" include a human being immediately upon conception and during the period of pregnancy, as well as one actually born. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

The welfare of a child is well-served by proper care during pregnancy. The general assembly violates no constitutional principle by providing that "child" should include a human being upon conception and during pregnancy, as well as one actually born. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

Otherwise, father could evade support responsibility by leaving state. To construe "child" so as to exclude an unborn child would permit the father of an unborn child to evade his responsibility for support by leaving the state at any time prior to the birth of the child. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

The Colorado Children's Code defines a "child" as a person under 18 years of age and therefore does not include an "unborn child". When the general assembly amended the definition of child in 1967 and removed the reference to an unborn child, the intent was to change the law and no longer subject an unborn child to the provisions of the Children's Code. People ex rel. H., 74 P.3d 494 (Colo. App. 2003).

Defendant becoming 18 before trial included. The juvenile court's exclusive original jurisdiction continued regardless of the fact that at least one defendant reached his eighteenth birthday before trial. Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

Age at which acts are committed is determinative factor as to the applicability of the Colorado Children's Code. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

Duty of parent to support until 21 years or emancipation not abrogated. There is no general mandate in subsection (3) of this section, as it existed prior to 1987, or § 19-7-101 (2) or 13-22-101 which abrogates the duty of support a parent has toward his minor child until the age of 21 or emancipation. In re Weaver, 398 Colo. App. 523, 571 P.2d 307 (1977).

Applied in People ex rel. Rodello v. Dist. Court, 164 Colo. 530, 436 P.2d 672 (1968); Jaramillo v. Dist. Court, 173 Colo. 459, 480 P.2d 841 (1971).

E. Delinquent Child.

By its definition of a "delinquent child" the general assembly includes, in its first two categories, only those children who commit acts which, if they were adults, would constitute commission of either a felony or a major misdemeanor. The act of violating a child in need of supervision probation is not remotely comparable to those set forth in the statute. People in Interest of D.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

A delinquent child is defined as one under 18 but over 10, who violates a state law, excepting state traffic laws. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

Juvenile charged under municipal shoplifting ordinance not "delinquent child". A juvenile who could have been charged under the general theft statute but is only charged under a municipal shoplifting ordinance carrying no jail sentence is not a delinquent child and the juvenile court does not have sole and exclusive jurisdiction. Wigent v. Shinsato, 43 Colo. App. 83, 601 P.2d 653 (1979).

Age of no criminal responsibility for felony raised to 14. Though the Colorado Children's Code may not in so many words raise the age below which there can be no criminal responsibility as concerns a felony from 10 to 14 years, that is exactly what it did. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

Child may be directly prosecuted for violation of traffic law. One under 18 who violates a traffic law is not, under the definition of the Colorado Children's Code, a delinquent child, and is therefore not subject to the original exclusive jurisdiction of the juvenile court in delinquency proceedings, and may be directly prosecuted for a violation of a state traffic law. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

However, the Colorado Children's Code contains no limitation on the authority of the juvenile court to consider traffic charges when coupled with other misdemeanor or felony charges committed as a part of the same act or series of acts and thus charges were subject to the compulsory joinder statute, § 18-1-408 (2). Marquez v. County Court, 719 P.2d 737 (Colo. App. 1986).

But vehicular homicide is not a violation of traffic law as that phrase is used in the Colorado Children's Code, but is a form of homicide

constituting a felony when committed by an adult. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

County court may sentence minor to jail term for traffic offense. When a minor is convicted of a traffic offense in a county court which has jurisdiction over that minor, the Colorado Children's Code does not prohibit the court from sentencing the minor to serve a term in the county jail. Villareal v. Lopez, 44 Colo. App. 555, 619 P.2d 86 (1980).

The act of entering into a marriage contract regardless of age is not one of the statutory acts of delinquency. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

Delinquency provisions formerly excluded crimes "punishable by death or life imprisonment" which were held not to embrace offenses which have a sentence of less than life imprisonment as a minimum and a maximum of either life imprisonment or death. Jaramillo v. Dist. Court, 173 Colo. 459, 480 P.2d 841 (1971); Vigil v. People, 174 Colo. 394, 484 P.2d 105 (1971); Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

Applied in John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965); People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980).

F. Dependency.

"Abuse". The term "abuse" must be liberally construed to carry out the declared purpose of neglect and dependency proceedings. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747, appeal dismissed for want of substantial federal question sub nom. J.K.S. v. Colo., 444 U.S. 987, 100 S. Ct. 515, 62 L. Ed. 2d 416 (1979).

An ordinarily reasonable parent can understand what it means to "abuse" and "mistreat" a child. Fundamental fairness does not require a statute to enumerate in all-encompassing examples, or exactly described acts, precisely how poorly a parent can treat a child before risking loss of parental rights. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747, appeal dismissed for want of substantial federal question sub nom. J.K.S. v. Colo., 444 U.S. 987, 100 S. Ct. 515, 62 L. Ed. 2d 416 (1979).

The terms of subsection (1)(b) of this section, although general in nature, are sufficiently precise to permit persons of common intelligence to understand their meaning, and are not void for vagueness under the due process requirements of the Colorado Constitution. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Purpose of adjudicatory hearing. An adjudicatory hearing on dependency or neglect is designed to determine whether the child, for whatever reason, lacks the benefit of parental guidance, concern, protection or support to which he is entitled. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Determination proceeding is civil in nature. A proceeding to determine whether a child is dependent or neglected is civil in nature. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747, appeal dismissed for want of substantial federal question sub nom. J.K.S. v. Colo., 444 U.S. 987, 100 S. Ct. 515, 62 L. Ed. 2d 416 (1979).

And child is entitled to support until 18. Under the provisions concerning dependent and neglected children, there is a continuing liability upon the father of a legitimate, or illegitimate child, to provide reasonable support commensurate with the need of the child and the ability of the father until said child has attained the age of 18 years. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

Dependent child becomes ward of state. This section defines dependent and neglected children, and a child under the age of 18 years that falls within the classification of a dependent or neglected child becomes a ward of the state and the state can intervene. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Care is preferably in child's own home. A neglected and dependent child's care and guidance should be preferably in his own home, so as to preserve and strengthen family ties. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Absent a showing of a causal relationship between an environment and a serious threat to the emotional or physical stability of the child, public policy requires that the care and guidance of each child should remain with his parents and in his own home. People in Interest of D.L.R., 44 Colo. App. 327, 618 P.2d 687 (Colo. 1980), rev'd on other grounds, 638 P.2d 39 (Colo. 1981).

Removal only where child's welfare and safety and protection of public endangered. The court should not remove a neglected and dependent child from the custody of his parents except when his welfare and safety or the protection of the public would be endangered. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Upon determination that conditions will continue in future. To determine that the best interests and welfare of a dependent or neglected child would be served by a termination of parental rights, the trial court must find that the condition which resulted in the determination that the child is dependent and neglected will in all probability continue into the future. In

re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Showing of prospective harm suffices. Former subsection (20) (now subsection (1)) can be satisfied upon a proper showing of prospective harm to the child. People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

The rule of statutory construction of § 2-4-104 which states that words in the present tense include the future tense requires that former subsection (20) be interpreted to read "who lacks or will lack proper parental care." People in the Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

Abuse of siblings may be considered in determining dependency and neglect. In determining the dependency and neglect of a child, evidence that his siblings have been abused may be considered by the trial court as probative of whether the nonabused child lacks proper parental care. People in Interest of B.W., 626 P.2d 742 (Colo. App. 1981).

While a parent's treatment of one child may be considered in determining whether another child is dependent or neglected, consideration of the individual needs, strengths, and weaknesses of each child and each parent is also probative. People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

And court must evaluate disabled parent's capabilities and contributions. The court must evaluate a disabled parent's actual and potential physical capabilities, his adaptation to the disability, how other members of the family have adjusted to the disability, and the special contributions the person may make to the family. The paramount consideration in this type of proceeding is the best interests of the child. People in Interest of B.W., 626 P.2d 742 (Colo. App. 1981).

Court must find that under no reasonable circumstances can welfare of child be served by continuation of parent-child relationship. This test requires the court to explore and specifically eliminate alternative remedies. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

But termination of parental rights is not mandatory. Although the evidence may be sufficient to support a finding of neglect and dependency and may require termination of parental rights in order to serve the best interests of the child, it does not follow that the court must terminate parental rights because the evidence is sufficient to support a finding of neglect and dependency. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Insufficient findings and conclusions. Findings and conclusions of the referee that the father failed without cause to provide reasonable support for his daughter and that the child's best interests dictated that his parental rights be terminated did not satisfy the prerequisites of subsection (20) and fell short of the required finding of a history of severe and continuous neglect, conclusion that there exists a substantial probability of future deprivation, and determination that under no reasonable circumstances could the child's welfare be served by a continuation of her relationship with her father. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Loss of physical custody pursuant to marriage dissolution may terminate custodial duties. A person who initiates a dependency or neglect action and obtains legal custody of a child need not continue to serve as legal custodian and provide support after losing physical custody of the child in a dissolution of marriage action. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

However, a person who undertakes a permanent obligation pursuant to a parental responsibility order under § 14-10-123 owes a duty of support to the child in a dissolution of marriage proceeding, and trial court has authority to enter a child support order pursuant to § 14-10-115 (1) and (17). In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Child was not "dependent child". Snyder v. Schmoyer, 106 Colo. 290, 104 P.2d 612 (1940).

Applied in Bd. of Control v. Mulertz, 60 Colo. 468, 154 P. 742 (1916); Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955); Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

G. Emancipated Juvenile.

Trial court properly applied the definition of "emancipated juvenile" in finding that the juvenile was emancipated. The trial court appropriately found that the juvenile was emancipated where the juvenile had been on his own for three months and had not been receiving financial support from his mother. People v. Lucas, 992 P.2d 619 (Colo. App. 1999).

H. Grandparent.

Exclusion from "grandparent" definition refers to all orders of termination, including those entered in dependency and neglect proceedings. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997).

I. Guardian Ad Litem.

Guardian ad litem may make recommendations to trial court by presenting opinions based upon an independent investigation or by advocating a specific result based upon the ev-

idence. People in Interest of J.E.B., 854 P.2d 1372 (Colo. App. 1993); People in the Matter of A.L.B., 994 P.2d 476 (Colo. App. 1999).

J. Independent Living.

Placement with a natural parent does not qualify as "independent living" within the meaning of subsection (65). People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

K. Placement Out of the Home.

A natural parent does not constitute a "facility or center operated or licensed by the department of human services" for purposes of subsection (85). People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

19-1-103.5. Other definitions. (Repealed)

Source: L. 96: Entire section added, p. 82, § 2, effective July 1. **L. 97:** Entire section repealed, p. 1031, § 67, effective August 6.

19-1-104. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court shall have exclusive original jurisdiction in proceedings:

(a) Concerning any child committing a delinquent act, as defined in section 19-1-103 (36);

(b) Concerning any child who is neglected or dependent, as set forth in section 19-3-102;

(c) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the juvenile court's jurisdiction under provisions of this section;

(d) To terminate the legal parent-child relationship;

(e) For the issuance of orders of support under article 6 of this title;

(f) To determine the parentage of a child and to make an order of support in connection therewith;

(g) For the adoption of a person of any age;

(h) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law;

(i) For the treatment or commitment pursuant to article 23 of title 17 and articles 10 to 15 of title 27, C.R.S., of a child who has a mental illness or developmental disability and who comes within the court's jurisdiction under other provisions of this section;

(j) Under the interstate compact on juveniles, part 7 of article 60 of title 24, C.R.S.;

(k) To make a determination concerning a petition filed pursuant to the "School Attendance Law of 1963", article 33 of title 22, C.R.S., and to enforce any lawful order of court made thereunder;

(l) To make a determination concerning a petition for review of need for placement in accordance with the provisions of section 19-1-115 (8);

(m) To decide the appeal of any child found to be in contempt of a municipal court located within the jurisdiction of the juvenile court, if confinement of the child is ordered by the municipal court.

(2) Except as otherwise provided by law, the juvenile court shall have jurisdiction in proceedings concerning any adult who abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction under other provisions of this section.

(3) (a) Upon hearing after prior notice to the child's parent, guardian, or legal custodian, the court may issue temporary orders providing for legal custody, protection, support, medical evaluation or medical treatment, surgical treatment, psychological evaluation or psychological treatment, or dental treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), the court may, on the basis of a report that a child's welfare may be endangered, and if the court

believes that a medical evaluation or emergency medical or surgical treatment is reasonably necessary, issue ex parte emergency orders. Where the need for a medical evaluation or medical or surgical emergency orders arises and the court is not in regular session, the judge or magistrate may give oral or telephone authorization for the necessary medical evaluation or emergency medical, surgical, or hospital care, which authorization shall have the same force and effect as if written, the same to be followed by a written order to enter on the first regular court day thereafter. Such written order shall make specific findings of fact that such emergency existed. Prior to the entry of any emergency order, reasonable effort shall be made to notify the parents, guardian, or other legal custodian for the purpose of gaining consent for such care; except that, if such consent cannot be secured and the child's welfare so requires, the court may authorize needed medical evaluation or emergency medical, surgical, or hospital care. Such ex parte emergency orders shall expire twenty-four hours after issuance; except that, at any time during such twenty-four-hour period, the parents, guardian, or other legal custodian may apply for a hearing to set aside the ex parte emergency order.

(4) Nothing in this section shall deprive the district court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the district court; except that:

(a) If a petition involving the same child is pending in juvenile court or if continuing jurisdiction has been previously acquired by the juvenile court, the district court shall certify the question of legal custody to the juvenile court; and

(b) The district court at any time may request the juvenile court to make recommendations pertaining to guardianship or legal custody.

(5) Where a custody award or an order allocating parental responsibilities with respect to a child has been made in a district court in a dissolution of marriage action or another proceeding and the jurisdiction of the district court in the case is continuing, the juvenile court may take jurisdiction in a case involving the same child if he or she is dependent or neglected or otherwise comes within the jurisdiction set forth in this section.

(6) When the juvenile court maintains jurisdiction in a case involving a child who is dependent or neglected and no child custody action or action for the allocation of parental responsibilities concerning the same child is pending in a district court in this state, upon the petition of a party to the dependency or neglect case, the juvenile court may enter an order allocating parental responsibilities and addressing parenting time and child support matters. The parent or person other than a parent with whom the child resides the majority of the time pursuant to the juvenile court's order shall file a certified copy of the order in the district court in the county where the child is permanently resident. Such order shall be treated in the district court as any other decree issued in a proceeding concerning the allocation of parental responsibilities.

Source: L. 87: Entire title R&RE, p. 698, § 1, effective October 1. **L. 91:** (3)(b) amended, p. 360, § 24, effective April 9. **L. 92:** (3) amended, p. 173, § 1, effective April 16. **L. 97:** (6) added, p. 516, § 3, effective July 1. **L. 98:** (1)(a) amended, p. 820, § 21, effective August 5; (5) and (6) amended, p. 1405, § 61, effective February 1, 1999. **L. 2001:** (1)(k) amended, p. 870, § 2, effective June 1. **L. 2006:** (1)(i) amended, p. 1399, § 51, effective August 7. **L. 2008:** (1)(l) amended, p. 1891, § 59, effective August 5.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-1-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the jurisdiction of the juvenile court of Denver, see also § 13-8-103; for the exemption from criminal responsibility for insufficient age, see § 18-1-801.

ANNOTATION

I. General Consideration.
II. Particular Proceedings.
A. Delinquency.
B. Dependency.
C. Paternity.
D. Adoption.
E. Other Proceedings.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Denver Juvenile Court", see 5 Den. B. Ass'n Rec. 1 (May, 1928). For article, "The State as Parens Patriae: Juvenile Versus the Divorce Courts on Questions Pertaining to Custody", see 21 Rocky Mt. L. Rev. 375 (1949). For article, "Workmen's Compensation, Attorneys and Family Law", see 31 Dicta 1 (1954). For note, "Jurisdiction of Custody Matters in Colorado", see 28 Rocky Mt. L. Rev. 393 (1956). For note, "Compulsory Medical Care for Infants", see 28 Rocky Mt. L. Rev. 235 (1956). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "Juvenile Delinquency in Colorado: The Law's Response to Society's Need", see 31 Rocky Mt. L. Rev. 1 (1958). For article, "One Year Review of Domestic Relations", see 35 Dicta 36 (1958). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For note, "Enforcement of Support Duties in Colorado", see 33 Rocky Mt. L. Rev. 70 (1960). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For note, "Juvenile Delinquency — Colorado's Unassumed Burden", see 36 U. Colo. L. Rev. 519 (1964). For article, "One Year Review of Domestic Relations", see 41 Den. L. Ctr. J. 97 (1964). For note, "In re Gault and the Colorado Children's Code", see 44 Den. L.J. 644 (1967). For note, "Delinquency Jurisdiction in Colorado: Garcia and the Children's Code", see 40 U. Colo. L. Rev. 80 (1967). For article, "Colorado Felony Sentencing", see 11 Colo. Law. 1478 (1982). For article, "Toward an Integrated Theory of Delinquency Responsibility", see 60 Den. L.J. 485 (1983). For note, "The Expanding Scope of Prosecutorial Discretion in Charging Juveniles as Adults: A Critical Look at People v. Thorpe", see 54 U. Colo. L. Rev. 617 (1983). For article, "The Expanded Jurisdiction of the Probate Court Under In re J.C.T.", see 37 Colo. Law. 83 (November 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The juvenile court is a statutory court with no jurisdiction beyond that expressly given by statute. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960); Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963); People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973); Pueblo County Comm'rs v. Dist. Court, 708 P.2d 466 (Colo. 1985).

Purpose is to secure uniform administration. Jurisdiction vested in the court of the county where the child resides provides uniform administration of the law and uniform protection of all children in the county. Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957).

The juvenile court being a creature of statute is limited by the provisions of the statute creating it and defining its jurisdiction. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

This code intends to grant broad jurisdiction to the juvenile court. Jaramillo v. District Court, 173 Colo. 459, 480 P.2d 841 (1971).

The identification of those authorized to invoke the court's jurisdiction operates to exclude all persons not mentioned. Where this section specifically identifies the officers or persons who may invoke the jurisdiction of a court in a proceeding which is purely statutory, it is necessary and essential that the persons thus named shall institute the proceedings. Avery v. County Court, 126 Colo. 421, 250 P.2d 122 (1952).

General rule. Jurisdiction attaches only in proceedings brought, not in behalf of any person, but solely where children are found delinquent or have been so circumstanced, neglected, or imposed upon as to require the state to take over their custody or act otherwise for their protection. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Carrera v. Kelley, 131 Colo. 421, 283 P.2d 162 (1955); Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960); Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963).

The status of being a neglected or dependent child triggers juvenile court jurisdiction over a child so circumstanced in Colorado. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

Allocation of juvenile and district court jurisdiction in criminal proceedings. Once an indictment charging a class 1 felony is filed, the jurisdiction of the district court is expressly fixed under subsection (4)(b)(I), and that jurisdiction is not lost simply because the juvenile defendant is convicted of a lesser offense. People v. Davenport, 43 Colo. App. 41, 602 P.2d 871 (1979).

Charges involving a minor should be resolved in adult court when the requirements of the direct filing statute are satisfied as to any charge. People v. Dalton, 70 P.3d 517 (Colo. App. 2002).

Juvenile court lacks exclusive jurisdiction where juvenile charged with municipal ordinance violation. A juvenile who could have been charged under the general theft statute but is only charged under a municipal shoplifting ordinance carrying no jail sentence is not a delinquent child and the juvenile court does not have sole and exclusive jurisdiction. Wigent v. Shinsato, 43 Colo. App. 83, 601 P.2d 653 (1979).

Juveniles to have same rights as adults in trials for municipal ordinance violations. The juvenile court's assumption of jurisdiction carries with it the same trial duties as to juveniles who have violated municipal ordinances, as a municipal court has to adults who violated the same ordinances. People v. Hight, 198 Colo. 299, 599 P.2d 885 (1979).

The Colorado Children's Code confers on Colorado courts jurisdiction over any child physically present in the state. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Colorado domicile of a child is not a prerequisite to jurisdiction of Colorado courts over that child. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Certification of the issue of custody to the juvenile court pursuant to former subsection (5)(a) (now subsection (4)(a)) is mandatory. In re Eckman, 645 P.2d 866 (Colo. App. 1982).

Juvenile court has power and duty to make such determinations as it deems appropriate regarding custody and care of a child adjudicated to be within its exclusive jurisdiction. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

But department of welfare does not. Given the broad power of the juvenile court to make determinations as to the custody and care of a child under its jurisdiction, it would be inconsistent and contrary to the intent of the general assembly to also find such a power in the Denver department of welfare. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

Juvenile court may delegate responsibility for placement of child. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

And department of welfare is agent of court subject to court's further authority. The court is vested with the ultimate responsibility in the placement of a child for adoption, and thus, whatever authority the welfare department may have concerning custody and/or placement arises as a result of a delegation of that authority by the court. In essence, therefore, the department acts as the agent of the court, assisting in the fulfillment of the court's responsibility. The grant to the welfare department of custody and authority to place for adoption is thus subject to revocation, limitation, or control by the court delegating such authority. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

In evaluating the child's best interests, the probate court did not exceed its jurisdiction by directing the GAL to find a permanent guardian or by considering the potential for a future adoption. Nothing in this section deprives the district court of the authority to appoint a guardian for a child. In re J.C.T., 176 P.3d 726 (Colo. 2007).

No automatic repeal by § 16-11-309. The general assembly did not automatically intend to repeal the special provision for discretionary sentencing of juveniles, this section, by the enactment of the general mandatory sentencing statute, § 16-11-309. People v. Dist. Court, 196 Colo. 249, 585 P.2d 913 (1978).

Testimony as to age is prima facie case for jurisdiction. The defendants, by their own testimony that they were 17 years old, made a prima facie case as to their juvenility, and it became incumbent upon the prosecutor to either prove that the defendants were 18 or older or to ask that the case be remanded to the juvenile court for transfer proceeding under the Colorado Children's Code. Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

Waiver of juvenile court's jurisdiction, after a transfer hearing, will not be set aside unless the findings upon which the waiver was based were erroneous. People in Interest of G.A.T., 183 Colo. 111, 515 P.2d 104 (1973).

Jurisdiction to order placement of juvenile in private facilities. Courts have the jurisdiction to enter custodial orders placing a juvenile in private facilities and directing that the appropriate county department of social services pay the cost of such private treatment. Heim v. Dist. Court, 195 Colo. 107, 575 P.2d 850 (1978).

While subsection (1) generally provides exclusive jurisdiction in the juvenile court over the actions enumerated therein, the clause "except as otherwise provided by law," is an express limitation on such jurisdiction. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Applied in People v. Dist. Court, 191 Colo. 298, 552 P.2d 297 (1976); People v. Maynes, 193 Colo. 111, 562 P.2d 756 (1977); Ford v. Ford, 194 Colo. 134, 571 P.2d 717 (1977); People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978); People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People v. Lee, 630 P.2d 583 (Colo. 1981); May v. People, 636 P.2d 672 (Colo. 1981); People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981); People v. M.A.W., 651 P.2d 433 (Colo. App. 1982); City & County of Denver v. Dist. Court, 675 P.2d 312

(Colo. 1984); People v. Cunningham, 678 P.2d 1058 (Colo. App. 1983); Rocha v. People, 713 P.2d 350 (Colo. 1986).

II. PARTICULAR PROCEEDINGS.

A. Delinquency.

Child may be prosecuted directly for traffic violation. One under 18 who violates a traffic law is not a delinquent child, and is therefore not subject to the original exclusive jurisdiction of the juvenile court in delinquency proceedings, and may be directly prosecuted for a violation of a state traffic law. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

However, the Colorado Children's Code contains no limitation on the authority of the juvenile court to consider traffic charges when coupled with other misdemeanor or felony charges committed as a part of the same act or series of acts and thus charges are subject to the compulsory joinder statute, § 18-1-408 (2). Marquez v. County Court, 719 P.2d 737 (Colo. App. 1986).

County court may sentence minor to jail term for traffic offense. When a minor is convicted of a traffic offense in a county court which has jurisdiction over that minor, the Colorado Children's Code does not prohibit the court from sentencing the minor to serve a term in the county jail. Villareal v. Lopez, 44 Colo. App. 555, 619 P.2d 86 (1980).

B. Dependency.

The remedy in case of an abandoned and neglected child rests exclusively in a juvenile court as provided in this section. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Juvenile courts are authorized to determine the question of dependency, and, if found, to determine who is responsible therefor, and to enforce their findings by judgment and execution. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957); Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963).

Jurisdiction proper where child abandoned to care of relatives. The assertion that the court lacked jurisdiction over a child because the child was not dependent and neglected is without merit where the child has been abandoned to the care of a grandfather and aunt. People in Interest of F.M., 44 Colo. App. 142, 609 P.2d 1123 (1980).

A juvenile court has no jurisdiction in contests about custody of children, whether it is between parents or other individuals. In re People in Interest of McChesney, 103 Colo. 115, 83 P.2d 772 (1938); Arnett v. Northern, 118 Colo. 307, 194 P.2d 909 (1948); Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956); Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

Determination of neglect and dependency can be sought only where immediate needs and welfare of child are in peril, and consequently, they represent situations where the doctrine of parens patriae would be applicable. Such being the case, the trial court properly assumes preliminary jurisdiction over children brought into the state by their mother, but whose custody had been previously awarded to the father by a court in another state, which jurisdiction will become absolute if a valid showing is made by the state of a dependency and neglect situation as defined in the Colorado Children's Code. In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Such a dispute is one for determination by a divorce proceeding by which proper jurisdiction of the person and subject matter could be had and all parties properly protected. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

But district court jurisdiction suspended when state brings dependency proceeding. A district court's jurisdiction to dispose of the custody of a child as between the parties to a divorce proceeding and as ancillary to that proceeding, is suspended by the institution of and during the pendency of a direct proceeding in dependency by the state in the interest of the child in a county court under this section. People ex rel. Lucke v. County Court, 109 Colo. 447, 126 P.2d 334 (1942).

The jurisdiction of a divorce court is exercised as between a husband and wife; that of a juvenile court in dependency proceedings, as between the state in the interest of the child, and the parents of the child. The two courts may have simultaneous, though not concurrent, jurisdiction concerning the custody of a child. But where both courts make orders concerning such custody, the operation of the order of the divorce court is suspended during the period, and only during the period, that the order of the juvenile court remains in force. Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931); Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

District court exceeded its statutory jurisdiction by ordering that defendant not have custody of her children as a condition of probation for the crime of criminally negligent child abuse resulting in death. Subsection (1) grants the juvenile court exclusive jurisdiction to determine the legal custody of any child who is dependent or neglected. People v. Forsythe, 43 P.3d 652 (Colo. App. 2001).

Once a petition for custody under § 14-10-123 is certified to be determined as part of a pending dependency and neglect action pursuant to this section, dissolution of marriage statutes cease to apply. Instead, provisions of the Colorado Children's Code govern, in view of the differing policies behind the respective

statutes. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993); People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part and rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

District court on habeas corpus has no jurisdiction over abandonment. A district court in habeas corpus proceedings has jurisdiction to determine whether a child is being unlawfully restrained by the grandparents. Such determination cannot in any manner affect the outcome of any adoption proceedings. An adjudication in the habeas corpus proceedings cannot be considered as an adjudication of abandonment as defined in the adoption provisions or as used in the dependent and neglected children provisions, as the question of abandonment is not an issue and the district court has no jurisdiction over abandonment. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

In view of the state's strong interest in providing for the welfare of children within its borders, the presence of an allegedly dependent or neglected child within Colorado will generally provide an adequate jurisdictional basis to adjudicate the dependency status of the child within Colorado. E.P. v. Dist. Court, 696 P.2d 254 (Colo. 1985).

The trial court properly assumes preliminary jurisdiction over children brought into the state by their mother, but whose custody had been previously awarded to the father by a court in another state, which jurisdiction will become absolute if a valid showing is made by the state of a dependency and neglect situation as defined in the Colorado Children's Code. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

An action in dependency may not be used as a means of making a child available for adoption in a stepparent adoption proceeding. Such tactic is inappropriate and contrary to the statutory language as well as the legislative intent of the Colorado Children's Code. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Judgment reversed for lack of jurisdiction. Cullen v. People ex rel. Baer, 152 Colo. 531, 383 P.2d 316 (1963).

Statute as basis of jurisdiction. Johnson v. People, 170 Colo. 137, 459 P.2d 579 (1969).

Applied in Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

C. Paternity.

This section confers jurisdiction on the juvenile court to determine parentage. Dikeou v. People, 95 Colo. 537, 38 P.2d 772 (1934); In re Morrow's Estate, 100 Colo. 424, 68 P.2d 36 (1937).

The courts should primarily be more concerned about the welfare of the child than in the residential status of the parties to the proceeding. No unreasonable impediment should be allowed which would prevent an expectant mother from pursuing the father of the unborn child and invoking the aid of a court having proper jurisdiction at the residence or domicile of the neglectful father if in this state. Campbell v. Gilliam, 127 Colo. 471, 257 P.2d 965 (1953).

The juvenile court has jurisdiction to determine the parentage of children yet unborn. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953); People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

D. Adoption.

Department's authority in adoption. Inasmuch as the general assembly has granted the court exclusive jurisdiction over adoptions, has expressly authorized adoptive placement, and has given the court the final and sole responsibility of approving or disapproving adoptions, it would be totally inconsistent to conclude that the welfare department or licensed placement agencies are the sole entities authorized to place a child for adoption following termination of parental rights. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Court's adoption authority not limited by former § 19-3-111 (2)(b). Subsection (1)(h) expressly provides that the court has exclusive jurisdiction in matters relating to the adoption of any person. No limitation on that authority arises by virtue of former § 19-3-111 (2)(b). People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

District court had jurisdiction to rule on nullification of adoption where issues regarding legal custody and adoption of child were incidental to determination of issues presented in dissolution proceeding and no petition was filed in juvenile court. In re Dickson, 983 P.2d 44 (Colo. App. 1998).

Limit on jurisdiction for interstate adoptions. The Interstate Compact on Placement of Children limits the jurisdiction of the juvenile court for interstate adoptions as an exception "otherwise provided by law". Denver Dept. of Soc. Servs. v. Dist. Court, 742 P.2d 339 (Colo. 1987).

Under article V of such compact, the sending agency retains jurisdiction until the child is adopted, and the mere filing of an adoption petition is not sufficient to divest the sending agency of jurisdiction. Denver Dept. of Soc. Servs. v. Dist. Court, 742 P.2d 339 (Colo. 1987).

E. Other Proceedings.

General rule whereby Colorado courts must respect custodial decrees of other states

is subject to two exceptions: (1) When the domicile of the child subject to a foreign decree changes to Colorado and there is a showing of a change in circumstances after the foreign decree; and (2) when conditions necessitate Colorado's intervention for the protection of any child found within its borders, through the doctrine of parens patriae. Thus, the requirement that a child need only be physically present within the state of Colorado does no violence to the rules governing interstate recognition of custodial decrees. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Court without power to proceed if prescribed residence lacking. Where a statute makes the residence of a petitioner within a particular county a condition upon which the jurisdiction of a court can be invoked, a court is wholly without power or authority to proceed in a statutory action unless the petitioner is a resident of such county within which the action is brought. Avery v. County Court, 126 Colo. 421, 250 P.2d 122 (1952).

Jurisdiction not divested when children move from county. The paternity action having been properly commenced in Denver as the statute provided, jurisdiction attached, and the court is not divested of it thereafter by reason of the fact that the children move out of the county. Del Campo v. People in Interest of Del Campo, 172 Colo. 277, 472 P.2d 130 (1970).

A prima facie case of sufficient residency, and also of dependency, established. Campbell v. Gilliam, 127 Colo. 471, 257 P.2d 965 (1953).

A parent may make necessary arrangements for the care of a child without order of court, guardianship or otherwise. It is not the law that before a child can be placed by a parent in temporary custody of a relative permission must be first obtained from the court. Diernfeld v. People in Interest of Diernfeld, 137 Colo. 238, 323 P.2d 628 (1958).

Attainment of majority while minor's appeal from adjudication as "child in need of supervision" is pending renders appeal moot in light of the Colorado Children's Code attempt to eliminate collateral legal consequences of adjudication. People v. T.B., 183 Colo. 310, 516 P.2d 642 (1973).

Jurisdiction to order department of welfare to return child to group care facility. The juvenile court did not exceed its jurisdiction, or lack jurisdiction, to order the Denver department of welfare to return a child who was adjudicated in need of supervision to a group care facility. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

The provisions of the Parental Notification Act, §§ 12-37.5-101 to 12-37.5-108, supersede subsection (3) with regard to the provision of notice to parents about abortions. Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

As a result, the Parental Notification Act must be held unconstitutional because it lacks a health exception to the parental notification requirement. Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

Removal of extraordinary life-sustaining devices. A juvenile court has jurisdiction in a shelter hearing to order the removal of all extraordinary life-sustaining devices from a child in the temporary custody of the department of social services if in the doctor's opinion the legal standard of cerebral death has been met. Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979).

Juvenile may not be compelled to undergo psychological evaluation under subsection (3), for purposes of a transfer hearing, because of his fifth amendment right against self-incrimination. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Juvenile's refusal to undergo psychological evaluation may not be used against him in a transfer hearing because it would impermissibly penalize his exercise of the fifth amendment right. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Applied in In re U.M. v. Dist. Court, 631 P.2d 165 (Colo. 1981).

19-1-105. Right to counsel and jury trial. (1) All hearings, including adjudicatory hearings, shall be heard by a judge or magistrate without a jury, except as otherwise provided by this title.

(2) The right to counsel shall be as provided in this title; except that, in all proceedings under the "School Attendance Law of 1963", article 33 of title 22, C.R.S., the court may appoint counsel or a guardian ad litem for the child, unless the child is already represented by counsel. If the court finds that it is in the best interest and welfare of the child, the court may appoint both counsel and a guardian ad litem. Nothing in this title shall prevent the court from appointing counsel if it deems representation by counsel necessary to protect the interests of the child or other parties. In addition, in all proceedings under the "School Attendance Law of 1963", article 33 of title 22, C.R.S., the court shall make available to the child's parent or guardian ad litem information concerning the truancy process.

Source: L. 87: Entire title R&RE, p. 700, § 1, effective October 1. **L. 91:** (1) amended, p. 360, § 25, effective April 9. **L. 2003:** (2) amended, p. 1320, § 1, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 and 19-1-107 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For note, "In re Gault and the Colorado Children's Code", see 44 Den. L.J. 644 (1967). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For comment, "Lassiter v. Department of Social Services: Due Process Takes an Ad Hoc Turn — What's a Parent to Do?", see 59 Den. L.J. 591 (1982). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "Final Draft of Proposed GAL Standards of Practice", see 22 Colo. Law. 1907 (1993).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

State's interest in juvenile proceedings stems from its role as parens patriae, and that interest is of significance both in the context of delinquency cases, and in neglect and dependency matters. McCall v. District Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982).

Trial by jury in the adjudicative stage of a juvenile proceeding is not required by the due process clause of the fourteenth amendment. People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1976).

And six-member jury is sufficient. Due process of law does not mandate that a juvenile be tried by a 12-member jury in connection with an adjudicatory hearing under the Colorado Children's Code even though the code limits the jury to six members. A six-member jury satisfies due process requirements. People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1976).

Jury demand right extended to all parties of record to delinquency proceeding. The general assembly's selection of "any interested party" stands out as a purposeful choice to extend the right of jury demand to all parties of record to the delinquency proceeding. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

And juvenile has no veto power over state's demand. There is no indication of an intent to bestow on the juvenile a veto power over the state's jury demand through a statutory right of jury waiver. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

The putative father has a statutory right to a jury trial in determining the issue of paternity. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

There is no right to a jury trial in a support hearing such as set forth in article 7. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Substantial compliance required. Proceedings in dependency or neglect affect important rights, so there must be substantial compliance with statutory requirements for conduct of those proceedings. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); C.S. v. People, 83 P.3d 627 (Colo. 2004).

Substantial compliance must appear of record. These proceedings are statutory and as they affect substantial rights there must be a substantial compliance with the provisions of the legislative enactment. Such a compliance must appear of record. It cannot be ignored. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955).

Any person proceeded against in court is entitled to counsel of his or her own choosing, and the selection of such counsel cannot be dictated by those who instigate the action. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

In a proceeding following a complaint filed by parents of an allegedly delinquent minor 17 years of age, who had selected her own counsel to represent her, an order of the trial court incorporating the parents' request that such counsel be prohibited from appearing or representing such minor was in excess of its jurisdiction. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

Parent has a statutory right to counsel at a statutorily prescribed proceeding for review of out-of-home placements of children. People in Interest of J.B., 702 P.2d 753 (Colo. App. 1985).

In determining whether an indigent parent has the right to appointed counsel in a termination proceeding resulting from a dependency and neglect adjudication, a court is to consider whether (1) the parent's interest is an extremely important one; (2) the state shares with the parent an interest in a correct decision, has a relatively weak pecuniary interest, and, in some but not all cases, has a possibly stronger interest in informal procedures; and (3) the complexity of the proceeding and the incapacity of the uncounselled parent could be, but would not

always be, great enough to make the risk of an erroneous deprivation of the parent's rights insupportably high. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

These factors should be considered to resolve parent's due process argument in a stepparent adoption proceeding. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

The decision whether due process calls for the appointment of counsel for indigent parents in stepparent adoption proceedings must be answered in the first instance by the trial court, subject to appellate review. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

Due process requires the appointment of counsel only where the parent's interests are at their strongest, where the state's interests are at their weakest, and where the risks of error are at their peak, and because risk of error was low, state's interest in achieving permanency for children was high, and hearing was not characterized by troublesome points of law, either substantive or procedural, parent's fundamental right to assistance of counsel was not implicated and court was not required to give parent a detailed advisement regarding her decision to appear pro se. C.S. v. People, 83 P.3d 627 (Colo. 2004).

Standing to appear of party entrusted with care of child. The Colorado Children's Code has not changed the basic law of the state that a grandparent to whom the child has been entrusted for care has status to appear and protest the actions of the court relative to the child. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Guardian includes persons vested by court with duty and authority to make major decisions affecting a child. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Legal custodian would be an interested party to a delinquency action. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

State is a party of record to a delinquency proceeding. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

Juvenile witness protected against self-incrimination. The fifth amendment, applicable to the states by operation of the fourteenth amendment, protects a child against self-incrimination under juvenile delinquency laws. The privilege of declining to testify is not a matter which lies within the exclusive discretion of a juvenile witness. The judge makes the decision based upon his understanding of the circumstances of the case. People v. Ledesma, 171 Colo. 407, 468 P.2d 27 (1970).

Respondents in a proceeding to terminate parental rights, having made a prior demand, were entitled to a jury trial at the adjudicatory hearing on remand. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Error for trial judge to refuse a jury trial and fail to notify defendants or parents or friends present, that a trial by jury might be had if they wished it. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Procedure of jury trial before referee improper. The trial court exceeded its jurisdiction in prescribing instead of a jury trial, and in lieu of a trial before a master or referee, a procedure whereby the parties were to have a "jury trial in all respects" but conducted by the referee, where it was agreed that the referee and the court would be bound by the jury verdict, although the jury was described as being "an advisory one". Maniatis v. Karakitsios, 161 Colo. 378, 422 P.2d 52 (1967).

Statute as basis for jurisdiction. People v. Flanigan, 191 Colo. 43, 536 P.2d 41 (1975).

Applied in Rose v. People, 111 Colo. 220, 139 P.2d 261 (1943); In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974); People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979); People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (Colo. 1980); People in Interest of E.A., 638 P.2d 278 (Colo. 1981); People in Interest of R.M.S., 651 P.2d 377 (Colo. 1982).

19-1-106. Hearings - procedure - record. (1) The Colorado rules of juvenile procedure shall apply in all proceedings under this title.

(2) Hearings may be conducted in an informal manner. The general public shall not be excluded unless the court determines that it is in the best interest of the child or of the community to exclude the general public, and, in such event, the court shall admit only such persons as have an interest in the case or the work of the court, including persons whom the district attorney, the county or city attorney, the child, or the parents, guardian, or other custodian of the child wish to be present.

(3) A verbatim record shall be taken of all proceedings.

(4) When more than one child is named in a petition alleging neglect or dependency, the hearings may be consolidated; except that separate hearings may be held with respect to disposition.

(5) Children's cases shall be heard separately from adults' cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

Source: L. 87: Entire title R&RE, p. 700, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Juvenile Delinquency Proceedings: The Due Process Model", see 40 U. Colo. L. Rev. 315 (1968).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Juvenile proceedings are governed by the procedural rules contained in the Colorado Children's Code. People ex rel. M.C.L., 671 P.2d 1339 (Colo. App. 1983).

Hearing may be informally conducted, and the court may take into consideration all factors which he normally takes into account when sentencing. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

And court is not bound by strict rules of evidence in a hearing to determine whether probation should be revoked. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Thus, there is a presumption that all incompetent or hearsay evidence is disregarded by a court in reaching its conclusions, so a judgment will not be reversed on appeal because of the admission of such evidence. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

However, the Colorado Children's Code does not dispense with rules of evidence which directly bear upon substantive proof although the Children's Code does permit hearings to be conducted in an informal manner. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

Arguments to the court are not matters of evidence, have no probative value, and are designed only to sway the court's findings and conclusions. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

In delinquency cases a verbatim record of the proceedings and evidence shall be maintained unless expressly waived. John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965).

Lack of transcript and evidence required reversal. Where an order was entered declaring a child neglected and dependent, severing parental rights, and holding the child's grandfather in contempt of court for failure to deliver the child, but the court reporter certified that there had been no transcript made of any of the hearings prior to the one on the contempt violation, and since there was no evidence or showing that the home environment which the grandfather might provide for the child would be unsatisfactory the judgment and orders of the trial court were reversed. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

The prosecutor may establish the same facts by the same witnesses and by the same real and documentary evidence that may have been used in earlier proceeding in the juvenile court. When oral testimony is offered for its intrinsic value with relation to the issue to be tried, rather than to establish what was said or done in proceedings before the juvenile court, former § 19-1-109 (2) does not prevent the giving of testimony because the same witness was previously called upon to give evidence relating to the same transaction in juvenile court proceedings. Gallegos v. People, 145 Colo. 53, 358 P.2d 1028 (1960), rev'd on other grounds, 370 U.S. 49, 82 S. Ct. 1209, 8 L. Ed. 2d 325, reh'g denied, 370 U.S. 965, 82 S. Ct. 1579, 8 L. Ed. 2d 835 (1962).

Defendant's constitutional right to confrontation and cross-examination paramount to juvenile's interests. Where both juveniles admittedly participated in the crimes which were charged against the defendant, both juveniles were seeking leniency and had already obtained the dismissal of serious felony counts which would have mandated imprisonment, the dispositional hearing was purposely set for a time subsequent to the defendant's trial, and no testimony tied the defendant to the crime other than that of the juvenile witnesses, the defendant's constitutional right to confrontation and cross-examination was paramount to the interests afforded a juvenile under former § 19-1-109 (2). People v. Pate, 625 P.2d 369 (Colo. 1981).

Applied in Lindsey v. People ex rel. Rush, 66 Colo. 343, 181 P. 531 (1919); People v. Hinchman, 196 Colo. 526, 589 P.2d 917 (1978);

People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People v. Thorpe, 641 P.2d 935 (Colo. 1982); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-1-107. Social study and other reports. (1) Unless waived by the court, the probation department or other agency designated by the court shall make a social study and report in writing in all children's cases; except that:

(a) No report is necessary in a delinquency case until after an order of adjudication has been entered, unless otherwise ordered by the court; and

(b) Adoption reports shall be as provided in article 5 of this title.

(2) For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child so requires.

(2.5) For purposes of determining the appropriate treatment plan in connection with the disposition of a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the report shall include a list of services available to families that are specific to the needs of the child and the child's family and that are available in the community where the family resides. The report shall establish a priority of the services if multiple services are recommended. The services may include, but are not limited to, transportation services, visitation services, psychological counseling, drug screening and treatment programs, marriage and family counseling, parenting classes, housing and day care assistance, and homemaker services.

(3) In any case where placement out of the home is recommended, the social study required by subsection (1) of this section shall include the cost of the recommended placement and an evaluation for placement containing the information required by section 19-1-115 (8) (e). Placement criteria shall be developed jointly by the department of education and the department of human services and, in the case of matters involving juvenile delinquency, in accordance with the criteria for the placement of juveniles specified in section 19-2-212 (1) (a). Such criteria shall be used by the probation department or agency designated by the court to determine its recommendation about the need for placement.

(4) The court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (2) of this section.

Source: L. 87: Entire title R&RE, p. 701, § 1, effective October 1. **L. 93:** (3) amended, p. 1546, § 1, effective July 1; (3) amended, p. 1134, § 65, effective July 1, 1994. **L. 94:** (2.5) added, p. 2051, § 2, effective July 1. **L. 97:** (3) amended, p. 1441, § 17, effective July 1. **L. 2005:** (3) amended, p. 766, § 29, effective June 1. **L. 2008:** (3) amended, p. 1891, § 60, effective August 5.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-1-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (3) in Senate Bill 93-134 and House Bill 93-1317 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (3), see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Referee/Commissioner Duties and Procedures in Denver Metro Domestic Matters", see 11 Colo. Law 951 (1982). For article, "Interested Parties in Juve-

nile Dependency and Neglect Cases", see 33 Colo. Law. 109 (August 2004).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Colorado Children's Code expressly contemplates participation of interested parties in juvenile cases. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

But does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

The Colorado Children's Code expressly contemplates the active participation of interested parties at the dispositional hearing. The Children's Code does not, however, delineate who is entitled to participate as an interested party. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

While the Colorado Children's Code does not expressly define those persons who may become "parties" to proceedings, it does contemplate the participation of interested third parties. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Includes persons furnishing child support pursuant to juvenile court order. Since the juvenile court has the power to compel legally responsible persons to support a child, it necessarily follows that a person furnishing support to a child in accordance with an order of the juvenile court has the right to intervene in a child in need of supervision proceeding as an interested party for the purpose of recovering the cost of that support. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

And persons able to aid court in its determination. Among those who can be considered interested parties are individuals who, because of their relationship with or particular knowledge concerning the child, can materially aid the court in its determination of what in fact is in the child's best interest. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

State is an "interested party". The state of Colorado, through its representative, the district attorney, is an "interested party" at the dispositional stage of a delinquency proceeding, as the same factors which establish the state's status as an interested party at the adjudicatory stage of the delinquency proceeding are equally applicable to the dispositional stage. People in Interest of R.M.S., 651 P.2d 377 (Colo. 1982).

State's interest in juvenile proceedings stems from its role as parens patriae, and that interest is of significance both in the context of delinquency cases, and neglect and dependency matters. McCall v. Dist. Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982).

Those having custodial experience with child have sufficient interest, knowledge, and concern relative to the child to bring them within the classification of "interested parties" and thus they are entitled, upon application, to intervene as a matter of right in the dispositional hearing. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Common-law hearsay objections as to admissibility of social study are not applicable. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Nonexpert or hearsay content affects weight, not admissibility. Where this section authorizes consideration of social reports, fact that they may contain hearsay or are prepared by nonexperts becomes matter concerning their weight and probative value and not their admissibility. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972); People in Interest of R.D.H., 944 P.2d 660 (Colo. App. 1997).

And admission of reports with cross-examination did not deny due process. Where parents obtained attendance of authors of social reports admitted in proceeding to adjudge child to be dependent and neglected and to terminate parental rights, and where parents cross-examined each author, admission of such reports did not deny due process to parents. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Admission of reports not unconstitutional. The admission of reports into evidence pursuant to subsection (2) violates neither constitutional confrontation requirements nor due process of law, where the reports are made available to all interested parties sufficiently in advance of the termination hearing to permit the parties to compel the attendance of the persons who wrote the reports or prepared the materials therein and to subject them to examination under oath. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

Opportunity to request cross-examination denied. Where it appeared the court in proceeding to terminate parental rights considered the contents of a letter in the nature of a social study as provided for by this section, but the respondents were not apprised of its existence, the respondents were not provided with an opportunity to request the cross-examination of the persons responsible for the study. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

C.R.C.P. 24 has no application in a proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

19-1-108. Magistrates - qualifications - duties. (1) The juvenile court may appoint one or more magistrates to hear any case or matter under the court's jurisdiction, except

where a jury trial has been requested pursuant to section 19-2-107 and in transfer hearings held pursuant to section 19-2-518. Magistrates shall serve at the pleasure of the court, unless otherwise provided by law.

(2) Every magistrate appointed pursuant to this section shall be licensed to practice law in Colorado; except that county judges who are not lawyers may be appointed to serve as magistrates, as authorized by section 13-6-105 (3), C.R.S., to hear detention and bond matters.

(3) (a) Repealed.

(a.5) Magistrates shall conduct hearings in the manner provided for the hearing of cases by the court. During the initial advisement of the rights of any party, the magistrate shall inform the party that, except as provided in this subsection (3), he or she has the right to a hearing before the judge in the first instance and that he or she may waive that right but that, by waiving that right, he or she is bound by the findings and recommendations of the magistrate, subject to a request for review as provided in subsection (5.5) of this section. The right to require a hearing before a judge shall not apply to hearings at which a child is advised of his or her rights pursuant to section 19-2-706, detention hearings held pursuant to sections 19-2-507 and 19-2-508, preliminary hearings held pursuant to section 19-2-705, temporary custody hearings held pursuant to section 19-3-403, proceedings held pursuant to article 4 of this title, and support proceedings held pursuant to article 6 of this title. In proceedings held pursuant to article 4 or 6 of this title, contested final orders regarding allocation of parental responsibilities may be heard by the magistrate only with the consent of all parties.

(b) In proceedings under article 2 of this title, the right to require a hearing before a judge shall be deemed waived unless a request is made by any party that the hearing be held before a judge at the time the matter is set for hearing.

(c) In proceedings under article 3 of this title, the right to require a hearing before a judge shall be deemed waived unless:

(I) A request is made by a party or the people of the state of Colorado that the hearing be held before the judge at the time the matter is set for hearing, if counsel for the party is present at the time the matter is set; or

(II) A request is made by a party or the people of the state of Colorado in writing within five days after receipt of notice of the setting if the matter is set for hearing outside of the presence of counsel for a represented party or if the matter is set on notice.

(4) At the conclusion of a hearing, the magistrate shall:

(a) Advise the parties before him of his findings and ruling;

(b) Advise the parties of their right to review by the judge of his findings and ruling;

(c) Prepare findings and a written order that shall become the order of the court, absent a petition for review being filed as provided in subsection (5.5) of this section; and

(d) Advise the parties that they have a right to object to an order allowing the review of any decree for placement of a child to be conducted as an administrative review by the department of human services and that if any party objects to administrative review, the court shall conduct the review.

(5) Repealed.

(5.5) A request for review shall be filed within fifteen days for proceedings under articles 2, 4, and 6 of this title or within five days for proceedings under article 3 of this title after the parties have received notice of the magistrate's ruling and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the magistrate and shall be reviewable upon the grounds set forth in rule 59 of the Colorado rules of civil procedure. A petition for review shall be a prerequisite before an appeal may be filed with the Colorado court of appeals or Colorado supreme court. The judge may, on his or her own motion, remand a case to another magistrate after action is taken on a petition for review.

(6) A magistrate may issue a lawful warrant taking a child into custody pursuant to section 19-2-503 and may issue search warrants as provided in sections 19-1-112 and 19-2-504.

Source: L. 87: Entire title R&RE, p. 701, § 1, effective October 1. **L. 88:** (3) amended, p. 741, § 2, effective July 1. **L. 91:** Entire section amended, p. 361, § 26, effective April 9. **L. 92:** (4)(d) added, p. 221, § 3, effective July 1. **L. 94:** (4)(d) amended, p. 2658, § 145, effective July 1. **L. 97:** (3) and (5) amended, p. 517, § 4, effective July 1. **L. 99:** (1) and (6) amended, p. 1375, § 11, effective July 1; (5) amended, p. 1086, § 4, effective July 1. **L. 2000:** (3)(c) amended, p. 35, § 1, effective July 1. **L. 2003:** (3)(b) amended, p. 1901, § 1, effective July 1. **L. 2006:** (3)(a) and (5) amended, p. 451, § 2, effective April 18; (3)(a.5) and (5.5) added, p. 452, §§ 3, 4, effective July 1, 2007. **L. 2007:** (3)(a.5) amended, p. 1652, § 9, effective May 31; (3)(a.5) amended, p. 2029, § 35, effective June 1; (4)(c) amended, p. 2029, § 36, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(a)(II) provided for the repeal of subsection (3)(a), effective July 1, 2007. (See L. 2006, p. 451.)

(3) Amendments to subsection (3)(a.5) by House Bill 07-1349 and House Bill 07-1367 were harmonized. (See L. 2006, p. 451.)

(4) Subsection (5)(b) provided for the repeal of subsection (5), effective July 1, 2007. (See L. 2006, p. 451.)

ANNOTATION

Law reviews. For note, "In re Gault and the Colorado Children's Code", see 44 Den. L. J. 644 (1967).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Natural parents have a constitutionally protected liberty interest in the companionship, care, custody, and management of their children. B.B. v. People in Interest of T.S.B., 785 P.2d 132 (Colo. 1990); In re R.G.B., 98 P.3d 958 (Colo. App. 2004).

To protect this interest, a court must provide parents with fundamentally fair procedures if termination of parental rights is sought. In re Petition of R.H.N., 710 P.2d 482 (Colo. 1985); In re R.G.B., 98 P.3d 958 (Colo. App. 2004).

Where an error of the trial court is considered fundamental or involves a miscarriage of justice, the appellate court may consider the issue for the first time on appeal. In re R.G.B., 98 P.3d 958 (Colo. App. 2004).

Two-stage proceeding before referee and court satisfies due process. Where, in a juvenile case, the procedure involves a two-stage fact-finding process with the first stage conducted by agreement of the parties before a referee with final judgment reserved for the court, it is not violative of the standards of due process and fair treatment. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

Actions of court and referee constitute one proceeding. There are not two separate proceedings, one before the referee and a second before the court, but rather one proceeding to pass on the question of possible delinquency. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

This section does not outline two separate proceedings, one before the referee and a second before the court; instead it prescribes a single, two-step proceeding in which the question of dependency or neglect is decided. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

And second hearing is not double jeopardy. A second hearing before the judge on motions of the people in juvenile proceedings, and the modification of the referee's findings, do not place the child twice in jeopardy. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

When parties agree to hearing before referee, they also agree to statutory procedures outlined for such hearings in this section. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

The referee is a hearing officer who acts with limited authority under the supervision and direction of a judge and who has no independent power to enter orders or decrees. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The procedural powers of a juvenile court after reviewing a juvenile magistrate's findings are governed not only by relevant provisions of the Colorado Children's Code but also by the Colorado Rules for Magistrates. People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

Requirement in subsection (3)(a) that a magistrate inform the parties of their right to a hearing before a judge in the first instance is mandatory. In re R.G.B., 98 P.3d 958 (Colo. App. 2004); In re A.P.H., 98 P.3d 955 (Colo. App. 2004).

Waiver of initial advisement of rights in § 19-3-202 (1) includes waiver of advisement

of right to be heard by a judge in subsection (3)(a) of this section. People ex rel. T.E.M., 124 P.3d 905 (Colo. App. 2005).

Subsection (3)(a) does not require parent to be advised at any time other than the initial appearance. Accordingly, a parent's waiver of right to formal advisement is effective throughout the dependency and neglect proceedings. People ex rel. T.E.M., 124 P.3d 905 (Colo. App. 2005).

Acts of referee dependent on waiver by parties and court confirmation. The essential ingredients to give judicial effect to a referee's findings and recommendations are: (a) A waiver, on the part of all parties, of a request for hearing before a judge, which may be affirmatively stated or may result from a lapse of five days without request; and (b) confirmation of the findings and recommendations by the court. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

Only if no request for review is filed, and if they are confirmed by judicial order, do the findings and recommendations of the referee become the decree of the court. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Final judgment results only after court acts. The findings and recommendations of the referee do not have the effect of a final judgment until adopted or modified by the court. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

Final responsibility for disposition lies with trial judge. Since the referee's recommendations do not automatically become the order of the court, and since the court may, even upon its own motion, order a rehearing, the final responsibility for the disposition of the case lies in every instance with the trial judge regardless of whether the parties request review. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

This responsibility may neither be assumed by, nor delegated to, a referee. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The court must draw its own conclusions from the testimony and must independently ascertain how the best interests of the child and of society may most appropriately be served in the case before him. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The parties have the right to demand that a judge hear the matter in the first instance, and the referee must so advise them. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Failure of magistrate to advise party of the right to a hearing before a judge or to secure a waiver of that right does not divest magistrate of subject matter jurisdiction. In re A.P.H., 98 P.3d 955 (Colo. App. 2004).

Magistrate's failure to advise party of this right, however, requires reversal of the order modifying the parties' parental responsibilities. In re A.P.H., 98 P.3d 955 (Colo. App. 2004).

Referee to transmit papers, findings, and recommendations to judge. At the conclusion of any hearing conducted by a referee, he must promptly transmit to the judge all papers relating to the case along with his findings of fact and recommendations as to the disposition of the case. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Jury trial held before referee was improper. The trial court exceeded its jurisdiction in prescribing, instead of a jury trial and in lieu of a trial before a master or referee, a procedure whereby the parties were to have a "jury trial in all respects" but conducted by the referee, where it was agreed that the referee and the court would be bound by the jury verdict, although the jury was described as being "an advisory one". Maniatis v. Karakitsios, 161 Colo. 378, 422 P.2d 52 (1967).

C.R.C.P. 53(e)(2) inapplicable in dependency proceeding. C.R.C.P. 53(e)(2), which provides that in an action tried without a jury the court shall accept a master's or referee's findings of fact unless clearly erroneous, is inapplicable in a dependency proceeding because that is a statutory proceeding in which the statute supersedes the conflicting rule. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Grandmother required to file petition for district court review of magistrate's denial of motion to intervene before seeking appellate review in paternity action where grandmother sought to intervene for visitation rights. This section is properly applied, not C.R.M. 7, if parents have waived the right to a hearing by a judge. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

Period for filing requests for review. For purposes of subsection (5) the "conclusion of the [juvenile] hearing" does not occur until the juvenile commissioner signs the written findings and recommendations, and transmits them to the juvenile judge by filing in the office of the clerk. The five-day period within which to file a request for review does not commence running until the filing date. People ex rel. M.C.L., 671 P.2d 1339 (Colo. App. 1983).

A request for review of the commissioner's findings, filed within five days after the commissioner's written findings and recommendations are filed in the district court, is timely. C.T.R. v. R.C.S., 672 P.2d 548 (Colo. App. 1983).

And such review shall be before the district court. The statute calls for an initial decision by the commissioner, with the right of appeal to the judge. There is nothing in the statute providing for new trial or rehearing directed to the com-

missioner. M.E.G. v. R.B.D., 676 P.2d 1250 (Colo. App. 1983).

Under subsection (5), the district court reviews only the record of the hearing before the magistrate and its review is similar to an appellate review of the magistrate's decision. The review of the trial court's decision by an appellate court, therefore, is similar to a second level of appellate review. People ex rel. J.G., 97 P.3d 300 (Colo. App. 2004).

A party must present an issue to the district court in a petition for review before that issue may be raised in the court of appeals. A party seeking review of a magistrate's decision must raise a particular issue in the district court so that the district court may have an opportunity to correct any error that may have been made by the magistrate. If a party does not raise an issue before the district court in a petition for review, but raises the issue on appeal for the first time, such party seeks to have the court of appeals correct an error that could have been corrected by the district court in a petition for review. People ex rel. K.L-P., 148 P.3d 402 (Colo. App. 2006).

Reinstatement of magistrate's delinquency judgment by appellate court does not violate double jeopardy if the district court acting pursuant to subsection (5) erroneously reversed the judgment. People ex rel. J.G., 97 P.3d 300 (Colo. App. 2004).

Interpreting the filing requirement of subsection (5) liberally to account for the best interests of the child and avoiding a construction of the statute that would call into question its constitutional validity, district court was determined to be authorized to retain jurisdiction to consider a late-filed petition when the delay was excusable neglect and the department failed to raise the timing issue. C.S. v. People, 83 P.3d 627 (Colo. 2004); People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

For the purpose of evaluating a court's discretionary decision whether to accept an untimely petition for review of a magistrate's order pursuant to former subsection (5), "excusable neglect" shall be defined as a situation where the failure to act results from circumstances that would cause a reasonably careful person to neglect a duty. People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

District court's determination that counsel's misunderstanding of the law did not constitute good cause amounted to a finding that juvenile had not shown "excusable neglect". People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

Allegations of "inexcusable neglect" should be resolved by the district court in the course of determining whether there is good cause to consider juvenile's petition for review, even though there was no excusable neglect to justify its late filing. People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

Because a district court's review of a magistrate's order is effectively appellate in nature, the factors identified in Estep v. People, 753 P.2d 1241 (Colo. 1988), and People v. Baker, 104 P.3d 893 (Colo. 2005), are equally important when a juvenile's ability to obtain appellate review of a judgment of delinquency entered by a magistrate is foreclosed by counsel's failure to file a timely petition for district court review pursuant to former subsection (5) and should be considered as part of a determination whether there is good cause to permit the late filing of a petition for review. Only after a determination is made that counsel's acts or omissions were inexcusable should the court turn to the Estep-Baker analysis of whether other factors "weigh heavily" in favor of permitting the late filing. People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

Magistrate may not synthesize conflicting testimony. Where the magistrate apparently combined portions of two very different versions of the facts into a third version unsupported by the record, the magistrate's findings could not be upheld. Although the magistrate may believe all or part of the testimony of any witness, he or she may not create a version which is not supported by the testimony of any witness. People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

Failure of commissioner to prepare a detailed written order as promised concerning child's placement in residential care facility excuses any delay by the school district in requesting review under either the "Exceptional Children's Educational Act" or the "Colorado Children's Code" because the time for filing for review would not begin to run until the written order was received. People v. Adams County Sch. Dist. No. 50, 732 P.2d 1222 (Colo. App. 1986).

Commissioner's statement at restitution hearing as to the amount of damages to be paid did not constitute sufficient findings to satisfy statutory requirement that findings be prepared at the conclusion of such hearing. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Mittimus order signed by commissioner two months prior to restitution hearing failed to satisfy statutory requirement that a written order be prepared. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

District court did not provide a sufficient record to support its affirmation of the commissioner's order where commissioner failed to make sufficient findings at the conclusion of

restitution hearing. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Subsection (5.5) does not provide for district court review of magistrate's orders in proceedings under article 5 of this title. In a kinship adoption case, appeal is made directly to the appellate courts. In re C.A.B.L., 221 P.3d 433 (Colo. App. 2009).

Applied in People in Interest of J.F.C., 660 P.2d 7 (Colo. App. 1982); In re Petition of Taylor, 134 P.3d 559 (Colo. App. 2006).

19-1-109. Appeals. (1) An appeal as provided in the introductory portion to section 13-4-102 (1), C.R.S., may be taken from any order, decree, or judgment. Appellate procedure shall be as provided by the Colorado appellate rules. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(2) (a) The people of the state of Colorado shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

(b) An order terminating or refusing to terminate the legal relationship between a parent or parents and one or more of the children of such parent or parents on a petition, or between a child and one or both parents of the child, shall be a final and appealable order.

(c) An order decreeing a child to be neglected or dependent shall be a final and appealable order after the entry of the disposition pursuant to section 19-3-508. Any appeal shall not affect the jurisdiction of the trial court to enter such further dispositional orders as the court believes to be in the best interests of the child.

(3) A workgroup to consider necessary changes to practices, rules, and statutes in order to ensure that appeals in cases concerning relinquishment, adoption, and dependency and neglect be resolved within six months after being filed shall be established. The workgroup shall be known as the child welfare appeals workgroup and shall be created in the state judicial department.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1. **L. 97:** (2) amended and (3) added, p. 1433, § 7, effective July 1. **L. 2000:** (3) amended, p. 1546, § 3, effective August 2.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Judgments in dependency proceedings may be reviewed by the supreme court as in appeal proceedings. Selk v. Ramsey, 110 Colo. 223, 132 P.2d 454 (1942).

Juvenile delinquency cases may be appealed to the supreme court after trial. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

But an interlocutory appeal is not available to either the state or the respondent in a delinquency proceeding under the Colorado Children's Code. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

Neither the state nor the respondent can prosecute interlocutory appeals in delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

And C.A.R. 4.1 does not apply. C.A.R. 4.1 cannot be stretched to permit an interlocutory appeal in a delinquency proceeding without doing violence to the distinction carefully drawn by the supreme court between a criminal proceeding and a proceeding in delinquency. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

C.A.R. 4.1, which authorizes certain interlocutory appeals in criminal cases, has no application to delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

Statute does not describe the order or judgment terminating the parent-child legal relationship as interlocutory, therefore, intent of the general assembly is to require immediate appeal of any order terminating parental rights. People ex rel. A.E., 994 P.2d 465 (Colo. App. 1999).

Application of C.A.R. 1(a)(1). Delinquency proceedings are no less subject to the finality requirements of C.A.R. 1(a)(1) than any other type of proceeding. People in Interest of D.H.,

37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Issue of notice and pleading in juvenile proceeding of constitutional proportions. Even if an allegation in a mother's motion for a new trial after the termination of her parental rights in her child was inadequate to raise the issue of adequacy of notice and pleading in a juvenile proceeding, it is of constitutional proportions, and the court of appeals is obliged to address the issue on its merits. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

Majority renders minor's appeal moot. Attainment of majority while minor's appeal from adjudication as child in need of supervision is pending renders the appeal moot in light of the Colorado Children's Code attempt to eliminate collateral legal consequences of adjudication. People v. T.B., 183 Colo. 310, 516 P.2d 642 (1973).

An order denying termination of the parent-child legal relationship does not "completely determine the rights of the parties involved" and is interlocutory in nature; therefore, such an order is not final and appealable. People in the interest of D.B., 855 P.2d 27 (Colo. App. 1993) (decided under law in effect prior to the 1997 amendment).

An order terminating a parent-child legal relationship is final and appealable thereby furnishing the right of immediate appeal to a parent, even when order relates to only one parent. People ex rel. A.E., 994 P.2d 465 (Colo. App. 1999).

C.A.R. 2 permits an appellate court to expedite decisions and order proceedings in accordance with its direction even though C.A.R. 3.4 does not extend to permanent custody orders entered in dependency or neglect proceedings. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Application of C.A.R. 3.4(b). Based on the "unique circumstances exception", court of appeals has the authority to extend the deadline for filing the notice of appeal in a dependency and neglect case. The "no extensions" provision in C.A.R. 3.4(b) does not preclude application of the unique circumstances exception, because it is an exception to procedural rules limiting a court's authority to grant exceptions. Here, the trial court must bear some responsibility for the late filing because of an ambiguous ruling and subsequent written orders. People ex rel. A.J.H., 134 P.3d 528 (Colo. App. 2006).

Subsection (2)(c) is not meant to delay permanent placement decisions while appeals of dependency and neglect orders are litigated. Subsection (2)(c) provides the trial court with continuing jurisdiction to enter further permanent custody orders under § 19-3-702 if it furthers the child's best interests, even if those orders are entered after the order adjudicating the child dependent or neglected is appealed. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Matter is moot where guardian ad litem (GAL) failed to offer facts in supplemental brief demonstrating a current basis to terminate mother's parental rights. Although the GAL argued on appeal that the court improperly failed to terminate mother's rights, the child has been returned to the mother and all parties believed that the child should remain in the mother's custody. A matter is moot when the relief sought, if granted, would have no practical legal effect on the existing controversy. People ex rel. L.O.L., 197 P.3d 291 (Colo. App. 2008).

Appellate court may review an otherwise moot issue, however, when it is capable of repetition and yet will evade review. The issue of whether the trial court rendered its decision using the wrong burden of proof is an issue that is capable of repetition and yet may evade review and thus may be addressed on its merits. People ex rel. L.O.L., 197 P.3d 291 (Colo. App. 2008).

Applied in People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979).

19-1-110. Previous orders and decrees - force and effect. All orders and decrees in proceedings concerning dependency and neglect, delinquency, relinquishment, adoption, paternity, or contributing to dependency or delinquency entered by the court prior to October 1, 1987, shall remain in full force and effect until modified or terminated by the court, as provided in this title.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1; entire section amended, p. 1827, § 1, effective August 27.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Action founded on repealed statute continued in full force. A properly filed action founded on a statute later repealed by the Colorado Children's Code continues in full force and effect for the purpose of sustaining liability, penalty, or forfeiture. People in Interest of M.K.A., 182 Colo. 172, 511 P.2d 477 (1973).

Based on savings clause. It is the legislative intent based upon the savings clause of the Colorado Children's Code and the general savings clause that a properly filed cause of action founded on the then existing statute, though that statute is later repealed, continues in full force and effect for the purpose of sustaining liability, penalty, or forfeiture. People in Interest of M.K.A., 182 Colo. 172, 511 P.2d 477 (1973).

19-1-111. Appointment of guardian ad litem. (1) The court shall appoint a guardian ad litem for the child in all dependency or neglect cases under this title.

(2) The court may appoint a guardian ad litem in the following cases:

(a) For a child in a delinquency proceeding where:

(I) No parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at the first or any subsequent hearing in the case;

(II) The court finds that a conflict of interest exists between the child and parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent; or

(III) The court makes specific findings that the appointment of a guardian ad litem is necessary to serve the best interests of the child and such specific findings are included in the court's order of appointment.

(b) For a child in proceedings under the "School Attendance Law of 1963", article 33 of title 22, C.R.S., when the court finds that the appointment is necessary due to exceptional and extraordinary circumstances.

(c) For a parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, or spousal equivalent in dependency or neglect proceedings who has been determined to have a mental illness or developmental disability by a court of competent jurisdiction; except that, if a conservator has been appointed, the conservator shall serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, the conservator shall be informed that a guardian ad litem has been appointed.

(3) The guardian ad litem for the child shall have the right to participate in all proceedings as a party, except in delinquency cases.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection (4), the appointment of a guardian ad litem pursuant to this section shall continue until such time as the court's jurisdiction is terminated.

(b) The appointment of the guardian ad litem shall terminate in a delinquency proceeding:

(I) At the time sentence is imposed, unless the court continues the appointment because the child is sentenced to residential or community out-of-home placement as a condition of probation; or

(II) When the child reaches eighteen years of age, unless the child has a developmental disability.

(c) The court may terminate the appointment of a guardian ad litem in a delinquency proceeding on its own motion or on the motion of the guardian ad litem when the appointment is no longer necessary due to any of the following reasons:

(I) The child's parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at a hearing in the case;

(II) The conflict of interest described in subparagraph (II) of paragraph (a) of subsection (2) of this section no longer exists; or

(III) The appointment no longer serves the best interests of the child.

(5) The guardian ad litem shall cooperate with any CASA volunteer appointed pursuant to section 19-1-206.

(6) Any person appointed to serve as a guardian ad litem pursuant to this section shall comply with the provisions set forth in the chief justice directive 97-02, concerning the court appointment of guardians ad litem and other representatives and of counsel for children and indigent persons in titles 14, 15, 19 (dependency and neglect only), 22, and 27, C.R.S., and any subsequent chief justice directive or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105, C.R.S., concerning the duties or responsibilities of guardians ad litem in legal matters affecting children.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1. **L. 92:** (1) amended, p. 221, § 4, effective July 1. **L. 96:** (5) added, p. 1089, § 2, effective May 23. **L. 98:** (2)(a)(I), (2)(a)(II), and (2)(c) amended, p. 1405, § 62, effective February 1, 1999. **L. 2000:** (6) added, p. 1774, § 4, effective July 1. **L. 2006:** (2)(c) amended, p. 1400, § 52, effective August 7. **L. 2009:** (2)(a)(III), (2)(b), and (4) amended, (SB 09-268), ch. 207, p. 942, § 3, effective May 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "Final Draft of Proposed GAL Standards of Practice", see 22 Colo. Law. 1907 (1993). For Supreme Court directive, see "Colorado Supreme Court Issues a Directive on GALs in Cases Under CRS Title 19", 25 Colo. Law. 17 (March 1996). For article, "The Role of the Guardian ad Litem in Juvenile Delinquency Court", see 27 Colo. Law. 53 (February 1998). For article, "The Guardian ad Litem in Juvenile Delinquency Court", see 27 Colo. Law. 83 (March 1998). For article, "The Updated Role of the Guardian ad Litem in Juvenile Delinquency Cases", see 31 Colo. Law. 79 (May 2002). For article, "Ethical Issues for Guardians ad Litem Representing Children in Dependency and Neglect Cases", see 31 Colo. Law. 43 (October 2002). For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (October 2002).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section does not limit a court's discretionary power to appoint a guardian ad litem to only those parents determined to be mentally ill or developmentally disabled. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Duties of parent's guardian ad litem and attorney in termination proceedings discussed in People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Period of appointment of guardian ad litem. A guardian ad litem appointed with respect to a motion to terminate the parent-child relationship serves until entry of a final decree of adoption or until the juvenile court jurisdiction is terminated. People in Interest of M.C.P., 768 P.2d 1253 (Colo. App. 1988).

19-1-111.5. Court-appointed special advocate. The court may appoint a CASA volunteer pursuant to the provisions of part 2 of this article if the court finds that the appointment would be in the best interests of the child. The court may direct the manner in which a CASA volunteer and any guardian ad litem appointed in a case shall collaborate.

Source: L. 96: Entire section added, p. 1089, § 3, effective May 23.

ANNOTATION

Law reviews. For article "CASA—A Powerful Voice for a Child", see 36 Colo. Law. 97 (October 2007).

19-1-112. Search warrants for the protection of children. (1) A search warrant may be issued by the juvenile court to search any place for the recovery of any child within the jurisdiction of the court believed to be a delinquent child or a neglected or dependent child.

(2) Such warrant shall be issued only on the conditions that the application for the warrant shall:

(a) Be in writing and supported by affidavit sworn to or affirmed before the court;

(b) Name or describe with particularity the child sought;

(c) State that the child is believed to be a delinquent child or a neglected or dependent child and the reasons upon which such belief is based;

(d) State the address or legal description of the place to be searched;

(e) State the reasons why it is necessary to proceed pursuant to this section.

(3) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(4) The search warrant shall be directed to any officer authorized by law to execute it in the county wherein the place to be searched is located.

(5) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.

(6) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.

(7) A copy of the warrant, the application therefor, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

(8) If the child is found, the child may be taken into custody in conformance with the provisions of section 19-2-201 or section 19-3-401.

(9) The warrant shall be returned to the issuing court.

Source: L. 87: Entire title R&RE, p. 703, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-113. Emergency protection orders. (1) The juvenile court is authorized to issue an ex parte written or verbal emergency protection order for the protection of a child pursuant to this section. A judge or magistrate shall be available in the juvenile court in each judicial district to issue by telephone emergency protection orders at all times when the juvenile court is otherwise closed for judicial business.

(2) Any person who has the responsibility of supervising a child placed out of the home by court order may seek an emergency protection order, through a P.O.S.T.-certified peace officer, when such person asserts reasonable grounds to believe that the child is in immediate and present danger based on an allegation that the child is absent without permission from the court-ordered placement.

(3) An emergency protection order may include, but need not be limited to:

(a) Restraining a person from threatening, molesting, or injuring the child;

(b) Restraining a person from interfering with the supervision of the child;

(c) Restraining a person from having contact with the child or the child's court-ordered residence;

(d) Restraining a person from harboring a child who is absent without permission from a court-ordered placement.

(4) An emergency protection order shall expire not later than the close of judicial business on the next day of judicial business following the day of issue, unless otherwise continued by the court. With respect to any continuing order, on two days' notice to the person who obtained the emergency protection order or on such shorter notice to that person as the court may prescribe, the responding person may appear and move for its dissolution

or modification. The motion to dissolve or modify the emergency protection order shall be set for hearing at the earliest possible time and shall take precedence over all matters except any emergency protection orders issued earlier, and the court shall determine such motion as expeditiously as the ends of justice require.

(5) (a) An emergency protection order may be issued only if the issuing judge or magistrate finds that an imminent danger exists to the welfare of a child based on an allegation that the child is absent without permission from the court-ordered placement. A verbal order shall be reduced to writing and signed by the peace officer through whom the emergency order was sought and shall include a statement of the grounds for the order asserted through the P.O.S.T.-certified peace officer. An order initially written shall meet the same requirement as an order issued verbally.

(b) The emergency protection order shall be served upon the respondent with a copy given to the person who sought the order and filed with the juvenile court as soon as practicable after issuance. If any person named as a respondent in an order issued pursuant to this section has not been served personally with the order but has received actual notice of the existence and substance of the order from any sheriff, deputy sheriff, or police officer, any act in violation of the order may be deemed by the juvenile court a violation of the order and as such may be sufficient to subject the respondent to the order to any penalty for such violation. If the law enforcement agency having jurisdiction to enforce the emergency protection order has cause to believe that a violation of the order has occurred, it shall enforce the order.

(6) The issuance of an emergency protection order shall not be considered evidence of any wrongdoing.

(7) A law enforcement officer who acts in good faith and without malice shall not be held civilly or criminally liable for acts performed pursuant to this section.

Source: L. 87: Entire title R&RE, p. 704, § 1, effective October 1. **L. 91:** (1) and (5)(a) amended, p. 362, § 27, effective April 9. **L. 2003:** (2) and (5)(a) amended, p. 1632, § 79, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-110.1 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-114. Order of protection. (1) The court may make an order of protection in assistance of, or as a condition of, any decree authorized by this title. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, spousal equivalent, or any other person who is party to a proceeding brought under this title.

(2) The order of protection may require any such person:

(a) To stay away from a child or his residence;

(b) To permit a parent to visit a child at stated periods;

(c) To abstain from offensive conduct against a child, the child's parent or parents, the child's guardian or legal custodian, or any other person to whom legal custody of or parental responsibilities with respect to a child has been given;

(d) To give proper attention to the care of the home;

(e) To cooperate in good faith with an agency:

(I) Which has been given legal custody of a child;

(II) Which is providing protective supervision of a child by court order; or

(III) To which the child has been referred by the court;

(f) To refrain from acts of commission or omission that tend to make a home an improper place for a child;

(g) To perform any legal obligation of support; or

(h) To pay for damages recoverable under the provisions of section 13-21-107, C.R.S.

(3) (a) When such an order of protection is made applicable to a parent or guardian, it may specifically require his or her active participation in the rehabilitation process and may

impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (5) of this section.

(b) The court may, when the court determines that it is in the best interests of the child, make an order of protection which shall be applicable to a parent or guardian of a child and the person with whom the child resides, if other than the child's parent or guardian, subject to the provisions of article 2 of this title. The order shall require the parent or guardian and the person with whom the child resides, if other than the parent or guardian, to be present at any juvenile proceeding concerning the child.

(4) After notice and opportunity for a hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the court finds that the best interests of the child and the public will be served thereby.

(5) (a) A person failing to comply with an order of protection without good cause may be found in contempt of court.

(b) The court shall issue a bench warrant for any parent or guardian or person with whom the child resides, if other than the parent or guardian, who, without good cause, fails to appear at any proceeding.

(c) For purposes of this subsection (5), good cause for failing to appear shall include, but shall not be limited to, a situation where a parent or guardian:

(I) Does not have physical custody of the child and resides outside of Colorado;

(II) Has physical custody of the child, but resides outside of Colorado and appearing in court will result in undue hardship to such parent or guardian; or

(III) Resides in Colorado, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent or guardian.

(d) The general assembly hereby declares that every parent or guardian whose child is the subject of a juvenile proceeding under this article should attend any such proceeding as often as is practicable.

(6) Repealed.

(7) Nothing in this section shall be construed to create a right for any juvenile to have his or her parent or guardian present at any proceeding at which such juvenile is present.

Source: L. 87: Entire title R&RE, p. 705, § 1, effective October 1. **L. 93, 1st Ex. Sess.:** (3) and (5) amended and (6) and (7) added, p. 29, § 1, effective September 13. **L. 96:** (6) repealed, p. 85, § 11, effective March 20. **L. 98:** (1) and (2)(c) amended, p. 1406, § 63, effective February 1, 1999.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The language in subsection (1), "the parent, guardian, or any other person who is party to a proceeding brought under § 19-1-104(1)(a), (1)(b), or (1)(c)", contemplates no limitation except that the person subject to the order be a party to the action. People in Interest of C.S.M., 194 Colo. 76, 570 P.2d 229 (1977); People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

The joining of the district attorney and law enforcement officers as parties to case and issuing said parties protective orders does not exceed the court's jurisdiction. The requirement that the court order an appropriate treatment plan implicitly authorizes the court to issue such orders as are reasonably necessary to implement that mandate. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Where no protection was provided for disclosure of plans for future criminal conduct or past criminal conduct not related to the treatment plans and communications between therapists and children and between the therapists and parents who had not engaged in sexually abusive conduct were not protected, protective or-

ders were properly confined to reasonably necessary relief. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement. (1) (a) Except as otherwise provided by law, in awarding legal custody of a child pursuant to the provisions of this title, the court may, if in the best interests of the child, give preference to the child's grandparent who is appropriate, capable, willing, and available to care for the child, if the court finds that there is no suitable natural or adoptive parent available, with due diligence having been exercised in attempting to locate any such natural or adoptive parent. Any individual, agency, or institution vested by the court with legal custody of a child shall have the rights and duties defined in section 19-1-103 (73).

(b) Any individual, agency, or institution vested by the court with the guardianship of the person of a child shall have the rights and duties defined in section 19-1-103 (60); except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given by the court.

(2) (a) If legal custody or guardianship of the person is vested in an agency or institution, the court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(b) An individual, agency, or institution vested by the court with legal custody or guardianship of the person of a child shall give the court any information concerning the child which the court at any time may require.

(3) (a) Any agency vested by the court with legal custody of a child shall have the right, subject to the approval of the court, to determine where and with whom the child shall live, but this paragraph (a) shall not apply to placement of children committed to the department of human services. In determining where and with whom a child shall live, if in the best interests of the child, preference may be given to the child's grandparent who is appropriate, capable, willing, and available to care for the child.

(b) No individual or agency vested by the court with legal custody of a child or with which a child is placed pursuant to subsection (8) of this section shall remove the child from the state for more than thirty days without court approval. When granting such approval, if appropriate, the court shall enter an order that the individual or agency comply with the requirements of the "Interstate Compact on Placement of Children" set forth in part 18 of article 60 of title 24, C.R.S.

(4) (a) A decree vesting legal custody of a child in an individual, institution, or agency or providing for placement of a child pursuant to section 19-2-906 or 19-3-403 or subsection (8) of this section shall be for a determinate period. Such decree shall be reviewed by the court no later than three months after it is entered, except a decree vesting legal custody of a child with the department of human services.

(b) The individual, institution, or agency vested with the legal custody of a child may petition the court for renewal of the decree. The court, after notice and hearing, may renew the decree for such additional determinate period as the court may determine if it finds such renewal to be in the best interests of the child and of the community. The findings of the court and the reasons therefor shall be entered with the order renewing or denying renewal of the decree.

(c) The court shall review any decree or, if there is no objection by any party to the action, the court may, in its discretion, require an administrative review by the state department of human services of any decree entered in accordance with this subsection (4) each six months after the initial review provided in paragraph (a) of this subsection (4). In the event that an administrative review is ordered, all counsel of record shall be notified and may appear at said review. Periodic reviews shall include the determinations and projections required in section 19-3-702 (6).

(d) (I) A decree vesting legal custody of a child or providing for placement of a child with an agency in which public moneys are expended shall be accompanied by an order of the court that obligates the parent of the child to pay a fee, based on the parent's ability to pay, to cover the costs of the guardian ad litem and of providing for residential care of the

child. When custody of the child is given to the county department of social services, such fee for residential care shall be in accordance with the fee requirements as provided by rule of the department of human services, and such fee shall apply, to the extent unpaid, to the entire period of placement. When a child is committed to the department of human services, such fee for care and treatment shall be in accordance with the fee requirements as provided by rule of the department of human services, and such fee shall apply, to the extent unpaid, to the entire period of placement.

(II) For an adoptive family who receives an approved Title IV-E adoption assistance subsidy pursuant to the federal "Social Security Act", 42 U.S.C. sec. 673 et seq., or an approved payment in subsidization of adoption pursuant to section 26-7-103, C.R.S., the cost of care, as defined in section 19-1-103 (30), shall not exceed the amount of the adoption assistance payment.

(5) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court if he so requests.

(6) Any time the court enters an order awarding legal custody of a child to the department of human services or to a county department pursuant to the provisions of this title, even temporarily, said order shall contain specific findings, if warranted by the evidence, as follows:

(a) That continuation of the child in the home would be contrary to the child's best interests;

(b) That there has been compliance with reasonable efforts requirements regarding removal of the child from the home, as follows:

(I) That reasonable efforts have been made to prevent or eliminate the need for removal of the child from the home; or

(II) That an emergency situation exists which requires the immediate temporary removal of the child from the home and it is reasonable that preventive efforts not be made due to the emergency situation; or

(III) That reasonable efforts to prevent the child's removal from the home are not required because of the existence of a circumstance described in subsection (7) of this section;

(c) That reasonable efforts have been made or will be made to reunite the child and the family or that efforts to reunite the child and the family have failed or that reasonable efforts to reunite the child and the family are not required pursuant to subsection (7) of this section; and

(d) That procedural safeguards with respect to parental rights have been applied in connection with the removal of the child from the home, a change in the child's placement out of the home, and any determination affecting parental visitation.

(6.5) Any time the court enters an order continuing a child in a placement out of the home pursuant to this title, said order shall contain specific findings, if warranted by the evidence, as follows:

(a) The continuation of the child in out-of-home placement is in the best interests of the child;

(b) That reasonable efforts have been made to reunite the child and the family or that reasonable efforts to reunite the child and the family are not required pursuant to subsection (7) of this section; and

(c) That procedural safeguards with respect to parental rights have been applied in connection with the continuation of the child in out-of-home placement, a change in the child's placement out of the home, and any determination affecting parental visitation.

(6.7) Any time the court enters an order related to out-of-home placement pursuant to paragraphs (a), (b), and (c) of subsection (6) or paragraph (b) of subsection (6.5) of this section; paragraph (f) of subsection (8) of this section; section 19-2-508 (3) (a) (VII) (A) and (3) (a) (VII) (B); section 19-2-906.5 (1) (a), (1) (b), and (3) (a) (III); or section 19-3-702 (3.5) (b) and (6) (a) (II), the order shall be effective as of the date the findings were made by the court, notwithstanding the date that a written order may be signed by the court. Written orders entered pursuant to paragraphs (a), (b), and (c) of subsection (6) or paragraph (b) of subsection (6.5) of this section; paragraph (f) of subsection (8) of this section; section 19-2-508 (3) (a) (VII) (A) and (3) (a) (VII) (B); section 19-2-906.5 (1) (a), (1) (b), and (3)

(a) (III); or section 19-3-702 (3.5) (b) and (6) (a) (II) shall state "the effective date of this order is" and shall not use the words "nunc pro tunc".

(7) Reasonable efforts are not required to prevent the child's removal from the home or to reunify the child and the family in the following circumstances:

(a) When the court finds that the parent has subjected the child to aggravated circumstances as described in sections 19-3-604 (1) and (2); or

(b) When the parental rights of the parent with respect to a sibling of the child have been involuntarily terminated; unless the prior sibling termination resulted from a parent delivering a child to a firefighter or a hospital staff member pursuant to the provisions of section 19-3-304.5; or

(c) When the court finds that the parent has been convicted of any of the following crimes:

(I) Murder of another child of the parent;

(II) Voluntary manslaughter of another child of the parent;

(III) Aiding, abetting, or attempting the commission of or conspiring or soliciting to commit the crimes in subparagraphs (I) and (II) of this paragraph (c); or

(IV) A felony assault that resulted in serious bodily injury to the child or to another child of the parent.

(8) (a) Whenever it appears necessary that the placement of a child out of the home will be for longer than ninety days, the placement is voluntary and not court-ordered, and the placement involves the direct expenditure of funds appropriated by the general assembly to the department of human services, a petition for review of need for placement shall be filed by the department or agency with which the child has been placed before the expiration of ninety days in the placement. A decree providing for voluntary placement of a child with an agency in which public moneys are expended shall be renewable in circumstances where there is documentation that the child has an emotional, a physical, or an intellectual disability that necessitates care and treatment for a longer duration than ninety days as provided pursuant to this paragraph (a). The court shall not transfer or require relinquishment of legal custody of, or otherwise terminate the parental rights with respect to, a child who has an emotional, a physical, or an intellectual disability and who was voluntarily placed out of the home for the purposes of obtaining special treatment or care solely because the parent or legal guardian is unable to provide the treatment or care. Whenever a child fifteen years of age or older consents to placement in a mental health facility pursuant to section 27-65-103, C.R.S., the review under section 27-65-103 (5), C.R.S., shall be conducted in lieu of and shall fulfill the requirements for review under this paragraph (a).

(b) (I) The petition and all subsequent court documents in any proceedings brought under paragraph (a) of this subsection (8) shall be titled "The People of the State of Colorado, in the Interest of _____, a child (or children) and Concerning _____, Respondent." The petition shall be verified, and the statements in the petition may be made upon information and belief.

(II) The petition shall set forth plainly the facts that bring the child within the court's jurisdiction, specifying that the child is subject to immediate placement out of the home or has been in voluntary placement out of the home and it appears that continuation of the placement is necessary for a time exceeding ninety days and continuation of the placement is necessary and is in the best interest of the child, the family, and the community. The petition shall also state the name, age, and residence of the child and the names and residences of his or her parents, guardian, or other legal custodian or of his or her nearest known relative if no parent, guardian, or other legal custodian is known.

(III) All petitions filed pursuant to this subsection (8) shall include the following statement: "If the child is placed out of the home for a period of twelve months or longer, the court shall hold a permanency hearing within said twelve months to determine the future status of the child. The review of any decree of placement of a child subsequent to the three-month review required by section 19-1-115 (4) (a), Colorado Revised Statutes, may be conducted as an administrative review by the department of human services. If you are a party to the action, you have a right to object to an administrative review, and, if you object, the review shall be conducted by the court."

(c) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall be substantially in the form specified in section 19-3-502 and be dealt with in the manner provided in section 19-3-503 and shall set forth the constitutional and legal rights of the child, his or her parents or guardian, and any other respondent, including the right to have an attorney present at the hearing on the petition. The petitioner shall send the summons to the child and his or her parents, guardian, or legal custodian by certified mail. Notice of the hearing shall be given by the court to the director of the facility or agency in which the child is placed and any person who has physical custody of the child and any attorney or guardian ad litem of record. Nothing in this subsection (8) shall require the presence of any person before the court unless the court so directs.

(d) The court shall appoint a guardian ad litem to protect the interest of the child for any child who is the subject of a petition for review of placement, unless the court makes specific findings that no useful purpose would be served by such appointment.

(e) For purposes of determining proper placement of the child, the petition for review of placement or social study shall be accompanied by an evaluation for placement prepared by the department or agency that recommends placement or with which the child has been placed. The evaluation for placement shall include an assessment of the child's physical and mental health, developmental status, family and social history, and educational status. The petition shall also be accompanied by recommended placements for the child and the monthly cost of each and a treatment plan that contains, at a minimum, the goals to be achieved by the placement; the services to be provided; the intensity, duration, and provider of the services; identification of the services that can be provided only in a residential setting; and the recommended duration of the placement. The petition or social study shall also be accompanied by the required fee to be charged to the parents pursuant to paragraph (d) of subsection (4) of this section. In addition, if a change in legal custody is recommended, the evaluation for placement shall include other alternatives that have been explored and the reason for their rejection, and the evaluation for placement shall contain an explanation of any particular placements that were considered and rejected and the reason for their rejection.

(f) The petition for review of need for placement shall request the court to determine, by a preponderance of the evidence, whether placement or continued placement is necessary and in the best interest of the child, the family, and the community and whether reasonable efforts have been made to return the child to a safe home or whether the child should be permanently removed from his or her home. If the court makes such findings, it shall enter a decree ordering the child's placement out of the home in the facility or setting that most appropriately meets the needs of the child, the family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107 or the evaluation for placement required by paragraph (e) of this subsection (8) that shall state the cost of recommended placement. If the evaluation for placement recommends placement in a facility located in Colorado that can provide appropriate treatment and that will accept the child, then the court shall not place the child in a facility outside this state. If the court deviates from the recommendations of the evaluation for placement in a manner that results in a difference in the cost of the disposition ordered by the court and the cost of the disposition recommended in the evaluation, the court shall make specific findings of fact relating to its decision, including the monthly cost of the placement, if ordered. A copy of such findings shall be sent to the chief justice of the Colorado supreme court, who shall report annually to the joint budget committee and the health and human services committees of the house of representatives and senate of the general assembly, or any successor committees, on such orders. If the court commits the child to the department of human services, it shall not make a specific placement, nor shall the provisions of this paragraph (f) relating to specific findings of fact be applicable. If the court makes a finding that continued placement is not necessary and is not in the best interest of the child, the family, and the community, the court shall dismiss the petition for review of need for placement and shall order that the child be returned home. The court may require a continued hearing of the petition for review of need for placement for a period not

to exceed fourteen days if it finds that the materials submitted are insufficient to make a finding as provided in this paragraph (f).

(g) A petition for review of need for placement shall not be handled as an informal adjustment in accordance with the provisions of section 19-3-501 (2).

Source: L. 87: Entire title R&RE, p. 706, § 1, effective October 1. **L. 89:** (4)(c) amended, p. 930, § 1, effective April 23. **L. 90:** (4)(d) amended, p. 1014, § 2, effective July 1. **L. 91:** (1)(a) and (3)(a) amended, p. 264, § 6, effective May 31. **L. 92:** (3)(b) and (4) amended and (6) added, p. 221, § 5, effective July 1. **L. 93:** (4)(c) and (6) amended, p. 388, § 1, effective April 19; (4)(d) amended, p. 1546, § 2, effective July 1. **L. 94:** (3)(a), (4)(a), (4)(c), and (4)(d) amended, p. 2659, § 146, effective July 1. **L. 98:** (1) amended, p. 820, § 22, effective August 5. **L. 2001:** (6) amended and (7) added, p. 842, § 3, effective June 1. **L. 2003:** (7)(b) amended, p. 769, § 2, effective March 25; (1)(a) amended, p. 2629, § 12, effective June 5; IP(6) and (6)(b)(II) amended and (6.5) added, p. 2486, § 1, effective July 1. **L. 2004:** (6.7) added, p. 357, § 1, effective July 1. **L. 2007:** (4)(d) amended and (8) added, p. 1506, § 4, effective May 31. **L. 2008:** (3)(b), (4)(a), and (6.7) amended, p. 1891, § 61, effective August 5. **L. 2009:** (4)(a) amended, (SB 09-292), ch. 369, p. 1949, § 34, effective August 5. **L. 2010:** (8)(a) amended, (SB 10-175), ch. 188, p. 788, § 37, effective April 29.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-3-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (6) and enacting subsection (7), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2007 act amending subsection (4)(d) and enacting subsection (8), see section 1 of chapter 351, Session Laws of Colorado 2007.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989). For article, "Parental Financial Liability for Juvenile Delinquents", see 37 Colo. Law. 49 (November 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section concerns guardianship of a child taken into custody and found to be dependent. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Guardianship creates legal obligation to care for child. Strangers are under no legal obligations to care for a child although they would be if awarded custody or decreed legal guardians after the child has been declared dependent and neglected. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Legal custody cannot be imposed on unwilling person not child's parent. While a public agency can be forced to accept legal custody of a child and assume the responsibilities enunciated in this section, legal custody of a child, with its attendant duties, may not be imposed upon an unwilling person who is not the child's parent. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

One standing in loco parentis may at his election be relieved of that status and the attendant obligations at any time upon petition to the court. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

Lack of notice to guardian denied due process. The lack of notice to guardians of the pendency of the petition to dismiss the guardianship was a denial of due process sufficient to deprive the juvenile court of jurisdiction and render its order of dismissal void, and the full hearing accorded guardians in habeas corpus proceedings did not cure the infirmity which resulted from the failure of the juvenile court to give the guardians notice of the petition. Woodson v. Ingram, 173 Colo. 65, 477 P.2d 455 (1970).

Parent awarded custody acts as representative of state. Upon adjudication of dependency, the child may be committed to a state institution. If it is assigned to a parent, the parent acts not as such, but as a representative of the state, and is subject to visitation or inspection. The court may require reports as to the care and training of the child, as well as of ability to care for it; and the court may impose conditions for

the care of the child. In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951); Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Placing child in foster care rather than with grandparents out of state is permissible when purpose of the placement is to strengthen family ties and secure potential relative placement within the state. People ex rel. E.C., 47 P.3d 707 (Colo. App. 2002).

Custodial order not disturbed unless for good cause shown. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Loss of physical custody pursuant to marriage dissolution may terminate custodial duties. A person who initiates a dependency or neglect action and obtains legal custody of a child need not continue to serve as legal custodian and provide support after losing physical custody of the child in a dissolution of marriage action. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

Fact that state department of institutions was vested with right to control an individual incident to its legal custody of that person is not per se determinative of the question of whether the person was a member of his father's household for purposes of the "family car doctrine". Hasegawa v. Day, 684 P.2d 936 (Colo. App. 1983), overruled in Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992).

Court had statutory duty to conduct periodic reviews of child's case and, therefore, had jurisdiction to enter order refusing to exercise continuing jurisdiction over case. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987), cert. denied, 754 P.2d 1177 (Colo. 1988).

Responsibility for costs of private placement may remain with the local social services department, even where legal custody is not granted to the department if the court finds the placement necessary to protect the best interests of the child. People in Interest of J.H., 770 P.2d 1355 (Colo. App. 1989), cert. denied, 786 P.2d 411 (Colo. 1989).

This section imposes an obligation on the parents to contribute towards the costs of their child's residential placement, computed according to their ability to pay, in accordance with fee requirements established by rule. M.S. v. People, 812 P.2d 632 (Colo. 1991).

The broad language of subsection (4)(d) applies to a juvenile adjudicated delinquent who was placed with an agency in which public moneys were expended. The obligation of his or her parents to reimburse the county for the cost of that care is mandatory. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

Subsection (4)(d) of this section and § 19-2-114 can be harmonized, however, to provide the court flexibility in allocating costs. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

Section 19-2-114 gives the court flexibility in allocating the cost of a juvenile's care. If appropriate, the court may order that the juvenile, in addition to his or her parents, also make reasonable payments, after considering the factors enumerated in the statute and making allowances for any restitution ordered to the victim or victims of a crime. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

The language of subsection (4)(d) of this section and § 26-5-102 conflicts with § 14-7-102 since those sections speak in terms of the parents ability to pay while § 14-7-102 imposes absolute liability without regard for the parents financial condition. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Subsection (4)(d) of this section and § 26-5-102 are specific provisions concerning dependency and neglect adjudications and, with regard to the parental support obligation, control over § 14-7-102. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Once child has been adjudicated dependent or neglected and placed pursuant to this section, the responsibility to reimburse state for costs for residential care is governed by subsection (4)(d), not § 14-7-102. People ex rel. B.S.M., 251 P.3d 511 (Colo. App. 2010).

No violation of due process rights of parents under subsection (4)(d) where parents were provided with notice and an opportunity to be heard as to the cost of their child's residential care. People ex rel. N.D.S., 5 P.3d 382 (Colo. App. 2000).

Where parents were the victims of their child's criminal acts, neither the Colorado Children's Code nor the Colorado Crime Victim Compensation Act implicitly or explicitly obviates the parents' duty of support under subsection (4)(d). People ex rel. N.D.S., 5 P.3d 382 (Colo. App. 2000).

Absent exceptional circumstances, former stepparent does not have an obligation to reimburse the state for costs incurred on behalf of his former stepchild. People ex rel. B.S.M., 251 P.3d 511 (Colo. App. 2010).

Mother's failure to bring any perceived deficiency in department's efforts to rehabilitate and reunite the family to the juvenile court's attention results in a waiver of her right to raise the reasonable efforts issue on appeal. People ex rel. T.M.W., 208 P.3d 272 (Colo. App. 2009).

Applied in People in Interest of A.L.B., 683 P.2d 813 (Colo. App. 1984); People in Interest of M.A.G., 732 P.2d 649 (Colo. App. 1986); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

19-1-115.5. Placement of children out of home - legislative declaration. (1) (a) (I) The general assembly hereby finds that the number of children in out-of-home

placement has increased significantly. The general assembly further finds that the facility in which a child is placed out of home is often not located in the same school district as the child's school district of residence. Nevertheless, the general assembly finds that, under the provisions of the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., children in foster home placement are considered residents of the school district in which the foster home is located. Accordingly, the school district in which the child is placed must accommodate the child and provide the child with the necessary educational services that serve the child's best interests while absorbing the costs associated with such services within the constraints of the school district's existing budget. The general assembly finds that in many circumstances it is not possible to meet the best interests of the child in out-of-home placement and the needs of other children enrolled in the school district within the confines of the district's budget.

(II) The general assembly determines that the number of children in out-of-home placement and the severity of their attendant needs are increasing. The ability to meet the needs of the children in out-of-home placement is frequently restricted by the limited resources available to a school district. Furthermore, the general assembly finds that there is a disproportionately larger number of children in out-of-home placement in some school districts than in others, thereby directly impacting the ability of certain school districts to effectively manage and finance the provision of quality educational services to all students in those districts.

(b) The general assembly therefore determines that it would serve the best interests of all children enrolled in a school district if the number of children placed in out-of-home placement facilities by county departments of social services in each of the various school districts is monitored so that the financial impact on all school districts throughout the state is manageable and equitable and so that the best interests of all children, whether or not in out-of-home placement, can be served.

(2) (a) Contingent upon implementation of the children, youth, and families automation project in the department of human services, the department shall make the following information available to all county departments throughout the state:

(I) Vacancies in out-of-home placement facilities within each county;

(II) The number of out-of-home placement children enrolled in each school district in relation to the total number of students enrolled in the school district;

(III) A list of all out-of-home placement facilities in each school district; and

(IV) To the extent known and within available resources, a list of the types of services available in each school district to meet the special needs of children in out-of-home placement.

(b) In every proceeding pursuant to this title in which the court contemplates placing a child out of home, the county department shall make recommendations to the court concerning the proposed placement. Such recommendations shall include information about placement facilities that are most able to serve appropriately the best interests of the child. In making its recommendations to the court, the county department shall consider:

(I) The special needs, if any, of the child to be placed, including the ability of the proposed out-of-home placement facility and the school district in which the proposed out-of-home placement facility is located to provide the necessary services to meet those needs;

(II) The proximity of the proposed out-of-home placement facility to the child's parents' home, if parental rights have not been terminated;

(III) Whether the proposed placement facility is in the same school district as the child's parents' residence;

(IV) If the proposed placement facility is not in the same school district as the child's parents' residence and if the information is available through the children, youth, and families automation project, the number of children placed out of home by the court who are already enrolled in the school district in which the proposed out-of-home placement facility is located.

(c) If the recommendation of the county department is to place the child in a placement facility that is not located in the same school district as the child's parents' residence, the

placing county department shall inform the school district in which the child's parents reside of the recommended placement.

(d) In placing a child out of home, the court shall consider the recommendations of the county department and any information it may have concerning whether the child's educational needs can be met adequately if the child is placed in an out-of-home placement facility located in a school district other than the district in which the child's parents reside.

(e) Upon entry of the court's order placing a child in an out-of-home placement facility located in a school district other than the school district in which the child's parents reside, the county department shall advise the school district in which the child's parents reside of the court's order.

(f) When a school district is advised by the county department that a child residing in that school district is to be placed in an out-of-home placement facility in another school district pursuant to a court order, the school district shall contact the school district in which the child is to be placed concerning:

(I) The special educational needs, if any, of the child; and

(II) The resources necessary to meet those special needs.

(3) The state board of education shall provide the department of human services with all aggregate, nonidentifying information concerning student enrollment in every school district in the state that the department of human services may request for purposes of implementing this section.

Source: L. 97: Entire section added, p. 147, § 1, effective July 1.

19-1-116. Funding - alternatives to placement out of the home - services to prevent continued involvement in child welfare system. (1) The state department of human services shall reimburse allowable expenses to county departments of social services for foster care. The state department's budget request for foster care shall be based upon the actual aggregate expenditure of federal, state, and local funds of all counties during the preceding twenty-four months on foster care. Special purpose funds, not to exceed five percent of the total appropriation for foster care, shall be retained by the department of human services for purposes of meeting emergencies and contingencies in individual counties. The amount thus reimbursed to each county shall represent the total expenditure by an individual county for foster care and for alternative services provided in conformance with the plan prepared and approved pursuant to paragraph (b) of subsection (2) and subsection (4) of this section.

(1.5) No later than July 1, 1994, each county in the state shall assure access to alternatives to out-of-home placements for families with children at imminent risk of out-of-home placements. Beginning September 1, 2011, a county may also provide access for families to alternative services to prevent continued involvement with the county department child welfare system. Two or more counties may jointly provide or purchase alternative services to families in the respective counties. Such services shall either be provided for under the plan adopted by placement alternative commissions in accordance with paragraph (b) of subsection (2) of this section or purchased by the county if such county does not have a placement alternative commission for the county. If a county purchases alternative services, the county shall ensure that the services purchased meet the goals of placement alternative commission plans, as described in subparagraph (I) of paragraph (b) of subsection (2) of this section.

(2) (a) The county commissioners in each county may appoint a placement alternatives commission consisting, where possible, of a physician or a licensed health professional, an attorney, representatives of a local law enforcement agency, representatives recommended by the court and probation department, representatives from the county department of social services, a local mental health clinic, and the county, district, or municipal public health agency, a representative of a local school district specializing in special education, a representative of a local community centered board, representatives of a local residential child care facility and a private not for profit agency providing nonresidential services for children and families, a representative specializing in occupational training or employment programs, a foster parent, and one or more representatives of the lay community. At least

fifty percent of the commission members shall represent the private sector. The county commissioners of two or more counties may jointly establish a district placement alternatives commission. A placement alternatives commission may be consolidated with other local advisory boards pursuant to section 24-1.7-103, C.R.S.

(b) (I) On or before July 1, 1994, the commission, if established, shall annually prepare a plan for the provision of services. The primary goals under the plan shall be to prevent imminent placement of children out of the home and to reunite children who have been placed out of the home with their families. If a county provides services to children who, without intervention, risk continued involvement with the child welfare system, the county shall include in the plan the goals to be achieved by providing said services. The plan shall be prepared using all available sources of information in the community, including public hearings. The plan shall specify the nature of the expenditures to be made and shall identify the services which are intended to prevent or minimize placement out of the home and to what extent. The plan shall contain, whenever practicable, a vocational component to provide assistance to older children concerning a transition into the work force upon completion of school. Upon approval of the plan by the county commissioners, the counties shall submit the plan to the department of human services.

(II) On and after July 1, 1994, the commissions shall prepare multi-year plans for services which contain the same goals as described in subparagraph (I) of this paragraph (b), and the period for the plans shall be determined in state board rules. The multi-year plans may be amended annually for budgetary or programmatic changes that are necessary to enhance service delivery or as otherwise deemed necessary to accomplish the goals of the plan, which reasons shall be set forth in state board rules. Counties shall submit the multi-year plans for approval by the state board.

(c) The commission shall review, on an ongoing basis, the effectiveness of programs within its jurisdiction which are designed to prevent or reduce placement and shall report its findings to the county commissioners annually.

(d) Repealed.

(e) Upon approval by the state board of human services of the plan submitted pursuant to paragraph (b) of this subsection (2), the department of human services shall reimburse county departments, as described in section 26-1-122, C.R.S., for eighty percent of the expenditures made in conformance with the plan.

(3) Repealed.

(4) (a) The departments of human services and education and the judicial department shall jointly develop guidelines for the content and submission of plans as described in paragraph (b) of subsection (2) of this section. Said guidelines shall include but not be limited to the information that is gathered by the commission, the goals to be addressed by the plan, the form of the budget for expenditures that are to be made under the plan, the services that are to be provided which are intended to prevent or minimize placement out of the home and to reunite children with their families and to what extent, and the method by which the plan may be amended during the year to meet the changing local conditions; except that amendments to the plan on and after July 1, 1994, shall be in accordance with subparagraph (II) of paragraph (b) of subsection (2) of this section. On and after July 1, 1993, any amendments to the guidelines shall be developed by the department of human services. Said guidelines shall then be submitted to the state board of human services, which shall promulgate rules for the submission of plans.

(b) In addition to the duties described in paragraph (a) of this subsection (4), the state board of human services is hereby authorized to develop through the adoption of rules categories of programs and services that promote the primary goals of the plan established in accordance with paragraph (b) of subsection (2) of this section. Any plan established on and after July 1, 1994, shall provide for the availability and provision of services or programs within such categories. Any plan established before July 1, 1994, shall be amended on or before that date to provide for the availability and provision of services or programs within such categories. The department of human services shall monitor the implementation of the plans as approved by the state board.

(5) Children currently residing in institutions whose condition would permit them to be discharged to less restrictive settings shall be so transferred at the earliest possible date.

Moneys appropriated and available to the department of human services shall be allocated on a priority basis by the department to county departments for the purposes of providing care to children who are discharged from the institution in which they reside if such children then receive care that is less intensive, closer to the residence of the parents or family, or in a less restrictive setting.

(6) It is the intent of the general assembly that no state moneys appropriated for placements out of the home shall be used by county boards of social services for the development of new county-run programs or for the expansion of existing staff or programs, if such development or expansion duplicates services already provided in the community, including, but not limited to, day care programs, independent living programs, home based care, transitional care, alternative school programs, counseling programs, street academies, tutorial programs, and in-home treatment and counseling programs.

(7) (a) Any county is hereby authorized to establish a program under which a multi-disciplinary, noncategorical program fund for the county shall be created and moneys from such fund shall be used to provide child welfare services to at-risk children and their families. Except as otherwise provided by federal law, the moneys in the county's fund contributed by state agencies shall be exempt from restrictive, categorical rules otherwise governing the use of such funds, including the "M" notation in the state's annual appropriations act which describes the general and federal fund contributions for federally supported programs.

(b) Such services shall include, but are not limited to, assessment, intervention, treatment, supervision, and shelter when and if appropriate.

(c) (I) The fund for each county shall consist of contributions, which shall be made by any state, county, or local agency, of federal, state, or local funds appropriated to or contributed by such agencies for child welfare services for at-risk children and their families. Appropriated funds shall include, but shall not be limited to, those appropriated to county departments of social services, the state department of human services, the department of public health and environment, the department of education, the department of public safety, the judicial department, and the job training partnership office in the governor's office. Each state agency's contribution to a county's fund shall be contingent upon and equal to contributions from the participating county and any other local agency that participates and seeks money from the fund. Nothing in this subsection (7) shall be construed to allow the allocation of general fund moneys to any other participating county in the same manner that such moneys are allocated to Mesa county in accordance with section 2 of HB 93-1171, as enacted during the first regular session of the fifty-ninth general assembly.

(II) The fund for each county may also consist of contributions from the fund of any other participating county.

(d) The county board of social services for a county shall convene a meeting of the local and state agencies that provide child welfare services to at-risk children and their families, that will participate in the program, and that seek moneys from the county's fund. The meeting shall be for the purpose of developing and adopting a memorandum of understanding between such agencies and the county's board of social services concerning the amount of contributions to the fund described in paragraph (c) of this subsection (7) and the allocation and use of moneys allocated from the fund. The memorandum of understanding shall provide for the designation of a governing entity to oversee the administration of the fund and a fiscal agent, a three-year plan, provisions for evaluating the programmatic and fiscal impact and overall effectiveness of the program, and a process for submitting the results of such evaluation to the general assembly and state officials on an annual basis.

(e) The three-year plan described in paragraph (d) of this subsection (7) shall be reviewed for approval by the state agencies affected by the implementation of such plan. The state agencies shall act on such plan within ninety days after such plan is submitted to the state agencies. It is the intent of the general assembly that the plan described in said paragraph (d) be implemented and that the state agencies cooperate in the development and implementation of such plan. Prior to the implementation of the program, a copy of the approved plan shall be submitted to the joint budget committee of the general assembly.

Prior to the expiration of the three-year plan, the county board of social services shall follow the procedures described in paragraph (d) of this subsection (7) for readoption of or revisions to the three-year plan.

Source: L. 87: Entire title R&RE, p. 707, § 1, effective October 1. **L. 90:** (1), (2)(b), (2)(e), and (3) amended and (2)(d) repealed, pp. 1013, 1015, §§ 1, 4, effective July 1. **L. 93:** (1.5) added and (2) and (4) amended, p. 2002, § 2, effective June 9; (7) added, p. 2095, § 1, effective July 1; (4) amended, p. 1135, § 66, effective July 1, 1994. **L. 94:** (1), (2)(a), (2)(b)(I), (2)(e), (3), (4)(b), (5), and (7)(c) amended, pp. 2659, 2736, §§ 147, 363, effective July 1; (7) amended, p. 1798, § 1, effective July 1. **L. 96:** (2)(b)(I) amended, p. 82, § 3, effective March 20; (3) amended, p. 1256, § 143, effective August 7. **L. 97:** (2)(a) amended, p. 1191, § 12, effective July 1. **L. 98:** (3) amended, p. 729, § 16, effective May 18; (4)(a) amended, p. 821, § 23, effective August 5. **L. 2001:** (3) repealed, p. 1176, § 5, effective August 8. **L. 2010:** (2)(a) amended, (HB 10-1422), ch. 419, p. 2075, § 35, effective August 11. **L. 2011:** (1.5) and (2)(b)(I) amended, (HB 11-1196), ch. 160, p. 553, § 3, effective August 10.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-120 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (4) in Senate Bill 93-254 and House Bill 93-1317 were harmonized. Amendments to subsection (2)(a) in section 147 of House Bill 94-1029 were superseded by amendments in section 363 of House Bill 94-1029. Amendments to subsection (7) in House Bill 94-1357 and House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (4), see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration contained in the 1996 act amending subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Provision stating that the department shall reimburse each county for an amount representing the "total expenditure" does not require a reimbursement rate of one hundred percent. Section 26-5-104 describes the applicable rate as eighty percent. Colo. Dept. of Soc. Servs. v. Montezuma County Dept. of Soc. Servs., 844 P.2d 1341 (Colo. App. 1992).

19-1-117. Visitation rights of grandparents. (1) Any grandparent of a child may, in the manner set forth in this section, seek a court order granting the grandparent reasonable grandchild visitation rights when there is or has been a child custody case or a case concerning the allocation of parental responsibilities relating to that child. Because cases arise that do not directly deal with child custody or the allocation of parental responsibilities but nonetheless have an impact on the custody of or parental responsibilities with respect to a child, for the purposes of this section, a "case concerning the allocation of parental responsibilities with respect to a child" includes any of the following, whether or not child custody was or parental responsibilities were specifically an issue:

(a) That the marriage of the child's parents has been declared invalid or has been dissolved by a court or that a court has entered a decree of legal separation with regard to such marriage;

(b) That legal custody of or parental responsibilities with respect to the child have been given or allocated to a party other than the child's parent or that the child has been placed outside of and does not reside in the home of the child's parent, excluding any child who has been placed for adoption or whose adoption has been legally finalized; or

(c) That the child's parent, who is the child of the grandparent, has died.

(2) A party seeking a grandchild visitation order shall submit, together with his or her motion for visitation, to the district court for the district in which the child resides an

affidavit setting forth facts supporting the requested order and shall give notice, together with a copy of his or her affidavit, to the party who has legal custody of the child or to the party with parental responsibilities as determined by a court pursuant to article 10 of title 14, C.R.S. The party with legal custody or parental responsibilities as determined by a court pursuant to article 10 of title 14, C.R.S., may file opposing affidavits. If neither party requests a hearing, the court shall enter an order granting grandchild visitation rights to the petitioning grandparent only upon a finding that the visitation is in the best interests of the child. A hearing shall be held if either party so requests or if it appears to the court that it is in the best interests of the child that a hearing be held. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard. If, at the conclusion of the hearing, the court finds it is in the best interests of the child to grant grandchild visitation rights to the petitioning grandparent, the court shall enter an order granting such rights.

(3) No grandparent may file an affidavit seeking an order granting grandchild visitation rights more than once every two years absent a showing of good cause. If the court finds there is good cause to file more than one such affidavit, it shall allow such additional affidavit to be filed and shall consider it. The court may order reasonable attorney fees to the prevailing party. The court may not make any order restricting the movement of the child if such restriction is solely for the purpose of allowing the grandparent the opportunity to exercise his grandchild visitation rights.

(4) The court may make an order modifying or terminating grandchild visitation rights whenever such order would serve the best interests of the child.

(5) Any order granting or denying parenting time rights to the parent of a child shall not affect visitation rights granted to a grandparent pursuant to this section.

Source: L. 87: Entire title R&RE, p. 709, § 1, effective October 1. **L. 91:** (5) added, p. 262, § 3, effective May 31. **L. 93:** (5) amended, p. 581, § 18, effective July 1. **L. 98:** IP(1), (1)(b), and (2) amended, p. 1406, § 64, effective February 1, 1999.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (5), see section 1 of chapter 165, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001). For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (February 2003). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section not unconstitutional on its face. This section may be construed to embody the protections required by Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). The court read this section as requiring that the biological parent's decisions concerning grandparent visitation must carry special weight and significance in the adjudication of the grandparent's visitation petition. The burden of proof must be such that the parent need not prove that the grandparent visitation would adversely affect the child. In re C.M., 74 P.3d 342 (Colo. App. 2002); In re R.A., 66 P.3d 146 (Colo. App. 2002).

Section does not violate due process clause of the United States Constitution merely because it authorizes visitation rights for grandparents. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

Due process does not require a showing of parental unfitness prior to applying the best interest of the child standard to determine custody of a child. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents not similarly situated to biological parents for purposes of an equal protection analysis when determining the threshold circumstances under which grandparents could be permitted to seek court-enforced visitation rights. In re Petition of R.A., 66 P.3d 146 (Colo. App. 2002).

The wishes of adoptive parents should be given "special significance" like those of bio-

logical parents in determining the merits of a grandparents' visitation request, since the intent underlying the adoption statutes is to place the adopted child in the same position as the natural child and, correspondingly, bestow upon the adoptive parents the same rights and duties of natural parents. In re Petition of R.A., 121 P.3d 295 (Colo. App. 2005), rev'd on other grounds sub nom. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Appropriate standard for issuance of an order of grandparent visitation requires: (1) A presumption in favor of the parental visitation determination; (2) to rebut this presumption, a showing by grandparents through clear and convincing evidence that the parental determination is not in the child's best interests; and (3) placement of the ultimate burden on grandparents to establish by clear and convincing evidence that the visitation they seek is in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

In applying the best interest of the child standard in grandparent visitation petitions, the court must, if it orders grandparent visitation, make findings of fact and conclusions of law identifying those "special factors" upon which it relied. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Colorado statute is construed to contain a presumption that parental determinations about grandparent visitation are in the child's best interest. This is a rebuttable presumption, however, when the grandparent presents clear and convincing evidence that the parent is either unfit to make the grandparent visitation determination or that the grandparent visitation decision made by the parent is not in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Grandparent bears same burden of proof in resisting subsequent motion to terminate grandparent visitation as in seeking initial order for grandparent visitation. Mother and adoptive father, as movants, have burden to present some evidence of a material change in circumstances affecting the child's best interests to support their motion to terminate grandparent visitation, and the marriage of the mother, the adoption of the child by stepfather, the reports of the child's therapist, and evidence of the child's difficulties in school met this burden. Grandparent must then rebut the presumption, by clear and convincing evidence, that mother's request to terminate visitation is in the best interests of the child. In re A.M., 251 P.3d 1119 (Colo. App. 2010).

Nonparent need not show demonstrated harm to child to satisfy "special weight" accorded to parental determinations. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Trial court correctly determined that the filing requirement set forth in this section did not affect the court's subject matter jurisdiction; instead, this section is a venue provision and, as such, is subject to waiver. In re Villalva, 56 P.3d 1214 (Colo. App. 2002).

Hearing required if custodial parent requests. Subsection (2) requires the trial court to hold a hearing if the custodial parent so requests. In re Seright, 649 P.2d 730 (Colo. App. 1982).

Filing of an opposing affidavit is not a condition precedent to the exercise of the right to require the holding of such a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982).

No time limitation for hearing request. This section does not specify any time limitation upon the abilities of the custodial parent to request a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982).

Denial of visitation rights held in the best interests of the children. Kudler v. Smith, 643 P.2d 783 (Colo. App. 1981).

Proceeding under article 4 of this title is a custody case for purposes of this section. F.H. v. K.L.M., 740 P.2d 1006 (Colo. App. 1987).

Dependency and neglect proceeding is a custody case for purposes of this section. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997).

Father did not have standing to argue the inadequacy of visitation rights of child's grandparents. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Grandmother lacked standing on the sole basis that the children did not reside with their father, who was never married to the children's mother, as the plain meaning of this section does not authorize the court to hear grandmother's petition unless there has been a judicial intervention into the marriage of the children's parents, a judicial placement of the children outside their family, or the death of the grandparent's child. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

Mother may make determinations about the level of contact her children have with her own family without fear of court intervention when the children are in the care and custody of their mother, grandmother's daughter, and there has been no prior court intervention. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

Visitation is primarily a right of the child and only secondarily a right of the visiting party. Conditions on visitation are within the sound

discretion of the trial court, taking the best interests of the child into consideration. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Order under this section expressly allowing noncustodial grandparent to take children to church, contrary to wishes of custodial parent, was invalid and unconstitutional. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Because trial court made no findings concerning child's best interests, did not accord special weight to mother's visitation proposal nor address whether mother's proposal would fail to meet the child's interests, and made no findings supporting its order allowing grandparent to take child to Wyoming over mother's objections, the visitation issue must be redetermined. In re C.M., 74 P.3d 342 (Colo. App. 2002).

This section does not authorize an order impinging on custodial parent's rights under § 14-10-130. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

The presumption giving custodial preference to biological parent need not be accorded to a legal guardian. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

No irreconcilable conflict between subsections (1)(b) and (1)(c). The so-called "adoption exclusion" in subsection (1)(b) has been construed to apply only when a child becomes available for adoption because the natural parents' rights have been legally terminated. Thus, subsection (1)(b) creates an interim statutory right in favor of grandparents to visit grandchildren until placement of the child for adoption or entry of a final decree of adoption. Under subsection (1)(c), a grandparent may seek visitation even after an adoption if a parent is deceased. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Grandparents' visitation rights not subject to exclusion under subsection (1)(b). Exclusionary statutory phrase concerning a child for whom adoption is pending or final pertains only to situations in which legal custody is vested in someone other than child's natural parents or in which child is place out of the natural parents' home. In re Aragon, 764 P.2d 419 (Colo. App. 1988).

Grandparents' visitation rights not automatically terminated by adoption of child by natural parent's new spouse. Paternal grandparents' right to visitation with grandchild after dissolution of parents' marriage was not automatically divested when child was subsequently adopted by mother's new spouse. In re Aragon, 764 P.2d 419 (Colo. App. 1988).

Grandparents' visitation rights automatically terminate upon completion of adoption, regardless of whether adoption is by strangers or a natural relative. Thus, paternal grandparents' visitation rights terminated upon completion of adoption by maternal grandparents. People in Interest of N.S., 821 P.2d 931 (Colo. App. 1991).

Grandparent's visitation rights terminated and grandparent did not have standing to assert rights under this section where she did not seek to intervene in dependency and neglect proceeding and no order granting her leave to do so was entered by the trial court. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997).

Grandparent's visitation rights terminated and grandparent did not have standing in the relinquishment proceedings where the child had been placed for adoption with the family designated by the birth parents. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Grandparent's visitation rights are lapsed, not terminated because of death of biological parents. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents and biological parents not treated differently when grandparents are allowed visitation rights of an adopted child unless a custody case has taken place. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Marriage dissolved for purposes of subsection (1)(a) speaks to the marriage between persons who were parties to child custody case. In re Davisson, 797 P.2d 809 (Colo. App. 1990).

Applicability of statute is not limited by parents' marital status at the time visitation motion is filed. In re Davisson, 797 P.2d 809 (Colo. App. 1990).

An administrative paternity proceeding is a child custody case within the meaning of subsection (1). People in Interest of A.M.B., 946 P.2d 607 (Colo. App. 1997).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

This section does not confer an unconditional right to intervene in a paternity action under C.R.C.P. 24(a)(1) or as of right under 24(a)(2). Because the statute requires a grandparent to rebut the presumption that the parent's decision regarding visitation is in the child's best interest, it does not give rise to an absolute right to visitation. Because the statute does not vest a grandparent with an absolute right to visitation and issues concerning grandparent visitation are not inherent in a paternity action, there is no absolute or unconditional right for a grandparent to intervene in a paternity action. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

Subsection (3) does not authorize court to award attorney fees in all requests for grand-

parent visitation. Subsection (3) does not apply to initial requests for visitation; rather, it applies only when visitation rights have been established in a prior dissolution proceeding. In re Gallegos, 251 P.3d 1086 (Colo. App. 2010).

19-1-117.5. Disputes concerning grandparent visitation. (1) Upon a verified motion by a grandparent who has been granted visitation or upon the court's own motion alleging that the person with legal custody or parental responsibilities of the child as determined by a court pursuant to article 10 of title 14, C.R.S., with whom visitation has been granted is not complying with a grandparent visitation order or schedule, the court shall determine from the verified motion, and response to the motion, if any, whether there has been or is likely to be a substantial and continuing noncompliance with the grandparent visitation order or schedule and either:

(a) Deny the motion, if there is an inadequate allegation; or

(b) Set the matter for hearing with notice to the grandparent and the person with legal custody or parental responsibilities of the child as determined by the court of the time and place of the hearing; or

(c) Require said parties to seek mediation and report back to the court on the results of the mediation within sixty days. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. At the end of the mediation period, the court may approve an agreement reached by the parties or shall set the matter for hearing.

(2) After the hearing, if a court finds that the person with legal custody or parental responsibilities of the child as determined by the court has not complied with the visitation order or schedule and has violated the court order, the court, in the best interests of the child, may issue orders which may include but need not be limited to:

(a) Imposing additional terms and conditions which are consistent with the court's previous order;

(b) Modifying the previous order to meet the best interests of the child;

(c) Requiring the violator to post bond or security to insure future compliance;

(d) Requiring that makeup visitation be provided for the aggrieved grandparent or child under the following conditions:

(I) That such visitation is of the same type and duration of visitation as that which was denied, including but not limited to visitation during weekends, on holidays, and on weekdays and during the summer;

(II) That such visitation is made up within one year after the noncompliance occurs;

(III) That such visitation is in the manner chosen by the aggrieved grandparent if it is in the best interests of the child;

(e) Finding the person who did not comply with the visitation schedule in contempt of court and imposing a fine or jail sentence;

(f) Awarding to the aggrieved party, where appropriate, actual expenses, including attorney fees, court costs, and expenses incurred by a grandparent because of the other person's failure to provide or exercise court-ordered visitation. Nothing in this section shall preclude a party's right to a separate and independent legal action in tort.

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 98:** IP(1), (1)(b), and IP(2) amended, p. 1407, § 65, effective February 1, 1999.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001).

A grandparent can possess visitation rights. Although the visitation rights of a grandparent are more limited than those of parents, they are still recognized by Colorado law. A limited right remains a right. Thus, a Colorado state court order of visitation rights vests a maternal grandmother with "parental rights" under the plain language of the federal International Parental Kidnapping Crime Act (IPKCA). Further, a grandparent with joint custody or sole custody as defined by state law also has "parental rights" under the IPKCA. U.S. v. Alahmad, 28 F. Supp.2d 1273 (D. Colo. 1998) (decided under law in effect prior to the 1998 amendment), aff'd, 211 F.3d 538 (10th Cir. 2000).

19-1-117.6. Definitions. (Repealed)

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

19-1-117.7. Requests for placement - legal custody by grandparents. Whenever a grandparent seeks the placement of his or her grandchild in the grandparent's home or seeks the legal custody of his or her grandchild pursuant to the provisions of this title, the court entering such order shall consider any credible evidence of the grandparent's past conduct of child abuse or neglect. Such evidence may include, but shall not be limited to, medical records, school records, police reports, information contained in records and reports of child abuse or neglect, and court records received by the court pursuant to section 19-1-307 (2) (f).

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 2003:** Entire section amended, p. 1401, § 6, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 196, Session Laws of Colorado 2003.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001).

19-1-118. Court records - inspection. (Repealed)

Source: L. 87: Entire title R&RE, p. 710, § 1, effective October 1. **L. 89:** (4) and (5) added, p. 914, § 1, effective July 1. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-1-119. Confidentiality of juvenile records - delinquency. (Repealed)

Source: L. 90: Entire section added, p. 1007, § 2, effective July 1. **L. 91:** IP(1)(a) amended and (1)(b.5) added, p. 205, § 1, effective July 1. **L. 93:** Entire section amended, p. 932, § 2, effective May 28; (1)(a), (1)(b), and (2)(a) amended, p. 1547, § 3, effective July 1; (1)(a)(VII) amended, p. 969, § 5, effective July 1; (5) amended, p. 453, § 4, effective July 1. **L. 93, 1st Ex. Sess.:** (1)(b.5) amended, p. 36, § 1, effective September 13. **L. 94:** (1)(b.5), IP(1)(c)(II), IP(2)(a), and (5) amended and (1)(b.7) added, p. 910, § 6, effective April 28; (1)(a)(X), (1)(a)(XIII)(A), (1)(c)(V), (2)(a)(X), (2)(a)(XIV)(A), and (6) amended, p. 2661, § 148, effective July 1. **L. 96:** (1)(a)(XIV) added, p. 1585, § 8, effective July 1; entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-304 in 1997.

19-1-120. Confidentiality of records - dependency and neglect. (Repealed)

Source: L. 90: Entire section added, (2)(k) and (2)(k)(I) amended, and (2)(l) added, pp. 1009, 1031, 1845, §§ 2, 21, 27, effective July 1; (2)(j) amended, p. 1845, § 37, effective October 1. **L. 91:** (2)(k) amended and (2)(m) to (2)(o) and (2.5) added, pp. 221, 222, §§ 1, 2, effective May 24. **L. 92:** (2)(a) amended, p. 406, § 21, effective June 3; (2)(a) amended, p. 1103, § 1, effective July 1. **L. 93:** (2)(k) and (2)(l) amended, p. 1779, § 42, effective June 6. **L. 94:** (2)(p) added, p. 2084, § 3, effective June 3; (2)(k), IP(2)(m), and (2)(o)

amended, p. 2662, § 149, effective July 1. **L. 96:** (2)(q) added and (2.5) amended, p. 1586, §§ 9, 10, effective July 1; entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-307 in 1997.

19-1-121. Confidentiality of records - "Uniform Parentage Act". (Repealed)

Source: L. 90: Entire section added, p. 1011, § 2, effective July 1. **L. 94:** Entire section amended, p. 1540, § 12, effective May 31. **L. 96:** Entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-308 in 1997.

19-1-122. Confidentiality of records - relinquishments and adoptions. (Repealed)

Source: L. 90: Entire section added, p. 1011, § 2, effective July 1. **L. 93:** Entire section amended, p. 656, § 2, effective July 1. **L. 96:** Entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-309 in 1997.

19-1-123. Expedited procedures for permanent placement - children under the age of six years - designated counties. (1) (a) The expedited procedures for the permanent placement of children under the age of six years required by article 3 of this title shall be implemented on a county-by-county basis beginning July 1, 1994. The department of human services, in consultation with the judicial department and the governing boards of each county department of social services, shall have the responsibility for establishing an implementation schedule which provides for statewide implementation of such expedited procedures by June 30, 2004. A designated county shall be required to implement the expedited procedures on and after the implementation date applicable to the county as specified in the implementation schedule for each new case filed in the county involving a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2).

(b) (Deleted by amendment, L. 2000, p. 73, § 1, effective March 10, 2000.)

(2) (a) The implementation of expedited procedures in additional counties shall be subject to specific appropriation by the general assembly or by determination by a county that no additional resources are needed.

(b) (Deleted by amendment, L. 2004, p. 193, § 6, effective August 4, 2004.)

Source: L. 94: Entire section added, p. 2052, § 3, effective July 1. **L. 98:** (2)(a) amended, p. 730, § 17, effective May 18. **L. 2000:** (1)(b) and (2)(a) amended, p. 73, § 1, effective March 10. **L. 2004:** (2) amended, p. 193, § 6, effective August 4.

ANNOTATION

Where trial court finds by clear and convincing evidence that a parent's conduct or condition is unlikely to change and parent has not therefore been adversely affected by decrease in time to comply with a treatment plan, parent lacks standing to challenge the constitutionality of this section under the equal protection guarantees of the fourteenth amendment of the U.S. Constitution and art. II, § 25, Colo. Const., as discriminatory based upon county-by-county adoption of the section. People in Interest of R.J.A., 994 P.2d 470 (Colo. App. 1999).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is subject to the longer incarceration period. The termination of parental rights concerning the

older child must still be subject to the longer allowable incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

19-1-124. Providers of children's services using federal or state moneys - use of state accounting standards. In order to ensure financial accountability, on and after July 1, 1997, all service providers receiving federal or state moneys through the state for the provision of services to children, youth, and families pursuant to this title shall use the accounting standards of the governmental accounting standards board.

Source: L. 96: Entire section added, p. 1155, § 5, effective January 1, 1997.

19-1-125. Family stabilization services. (1) It is the intent of the general assembly to assist in the provision of appropriate and necessary short-term services to help stabilize families that are at risk of having their children placed in out-of-home placement when those families voluntarily request such services. It is further the intent of the general assembly that county departments provide for family stabilization services through contracts with private or nonprofit organizations or entities whenever possible.

(2) Repealed.

(3) County departments shall use any moneys allocated pursuant to this section to provide for family stabilization services, defined by rule of the state board of human services, that may include but not be limited to:

(a) Less than twenty-four-hour respite care for parents and children;

(b) In-home services that may include kinship care and counseling; or

(c) Services that assist the family to reintegrate following a separation or out-of-home placement.

Source: L. 2001: Entire section added, p. 739, § 1, effective June 1. **L. 2002:** (1) and (2) amended, p. 528, § 2, effective May 24. **L. 2003:** (2) amended, p. 386, § 1, effective March 5. **L. 2004:** (2)(d) added, p. 1555, § 3, effective May 28.

Editor's note: Subsection (2)(d)(I) provided for the repeal of subsection (2), effective July 1, 2006. (See L. 2004, p. 1555.)

19-1-126. Compliance with the federal "Indian Child Welfare Act". (1) Commencing thirty days after May 30, 2002, in each case filed pursuant to this title to which the terms of the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq., apply, including but not limited to certain juvenile delinquency proceedings, dependency or neglect proceedings, termination of parental rights proceedings, and pre-adoptive and adoption proceedings, the petitioning or filing party shall:

(a) Make continuing inquiries to determine whether the child who is the subject of the proceeding is an Indian child and, if so, shall determine the identity of the Indian child's tribe;

(b) If the petitioning or filing party knows or has reason to believe that the child who is the subject of the proceeding is an Indian child, send notice by registered mail, return receipt requested, to the parent or Indian custodian of such child, to the tribal agent of the Indian child's tribe as designated in title 25 of the code of federal regulations, part 23, or, if such agent has not been designated, to the highest-elected or highest-appointed official of the Indian child's tribe, to the highest-elected or highest-appointed tribal judge of the Indian child's tribe, and to the social service department of the Indian child's tribe; and

(c) Disclose in the complaint, petition, or other commencing pleading filed with the court that the child who is the subject of the proceeding is an Indian child and the identity of the Indian child's tribe or what efforts the petitioning or filing party has made in determining whether the child is an Indian child. If the child who is the subject of the proceeding is determined to be an Indian child, the petitioning or filing party shall further identify what reasonable efforts have been made to send notice to the persons identified in

paragraph (b) of this subsection (1). The postal receipts indicating that notice was properly sent by such petitioning or filing party to the parent or Indian custodian of the Indian child and to the Indian child's tribe shall be attached to the complaint, petition, or other commencing pleading filed with the court; except that, if notification has not been perfected at the time the initial complaint, petition, or other commencing pleading is filed with the court or if the postal receipts have not been received back from the post office, the petitioning or filing party shall identify such circumstances to the court and shall thereafter file the postal receipts with the court within ten days after the filing of the complaint, petition, or other commencing pleading.

(2) In any of the cases identified in subsection (1) of this section in which the initial complaint, petition, or other commencing pleading does not disclose whether the child who is the subject of the proceeding is an Indian child, the court shall inquire of the parties at the first hearing whether the child is an Indian child and, if so, whether the parties have complied with the procedural requirements set forth in the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq.

(3) The state department of human services and the county departments of social services are encouraged to work cooperatively in the sharing of information that any of such agencies obtains or receives concerning any federally recognized tribal entities existing outside the state of Colorado, including but not limited to information about the appropriate person from any such tribal entity to contact with the notice prescribed by this section.

(4) (a) In any of the cases identified in subsection (1) of this section involving an Indian child, in determining whether to transfer such a case to a tribal court, the court is encouraged to consider the following guidelines:

(I) The court may find that good cause exists to deny a transfer of the proceeding to the tribal court if the Indian child's tribe does not have a tribal court; or

(II) The court may find that good cause exists to deny a transfer of the proceeding to the tribal court if:

(A) Either of the Indian child's parents objects to such a transfer; or

(B) The proceeding was at an advanced stage when the petition to transfer the proceeding to the tribal court was received from the Indian child's tribe and the petitioning party did not file the petition to transfer to the tribal court promptly after receiving the notice of hearing.

(b) The burden of proof under this subsection (4) shall be on the party opposing a transfer of the case.

Source: L. 2002: Entire section added, p. 784, § 3, effective May 30.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (November 2002). For article, "Finding the Indian Child Welfare Act in Unexpected Places: Applicability in Private Non-Parent Custody Actions", see 81 U. Colo. L. Rev. 1119 (2010).

Reasonable grounds to believe that a child is an Indian child must depend upon the totality of the circumstances. In light of the purpose of the federal Indian Child Welfare Act, however, to permit tribal involvement in child-custody determinations whenever tribal members are involved, the threshold requirement for notice is clearly not intended to be high. B.H. v. People ex rel. X.H., 138 P.3d 299 (Colo. 2006).

Where caseworker knew that child would be able to enroll in a tribe if mother enrolled, this knowledge is sufficient to warrant notice to the tribe of a motion to terminate parental rights. The state's obligation to notify potentially concerned tribes necessarily arises prior to an ultimate determination of the child's Indian status. As long as there is sufficiently reliable information of virtually any criteria on which membership might be based, there is adequate information to trigger the notice provisions of the federal Indian Child Welfare Act. People ex rel. S.R.M., 153 P.3d 438 (Colo. App. 2006).

Department of human services must file notices or return receipt cards with the court even if the status of the minor child as an Indian

child pursuant to the Indian Child Welfare Act is undetermined. Failure to file notices or return receipts was not harmless error because department had relevant facts about the child, and it was not possible to determine from the record whether those facts were shared with the tribe. People ex rel. N.D.C., 210 P.3d 494 (Colo. App. 2009).

Father's failure to timely return assessment form did not eliminate the duty of notice and further inquiry under subsection (1)(a). People ex rel. J.O., 170 P.3d 840 (Colo. App. 2007).

Waiver of notice. Tribe does not waive right to intervene, or corresponding right to receive notice, unless it explicitly states that it will not intervene. People ex rel. S.R.M., 153 P.3d 438 (Colo. App. 2006); People ex rel. T.M.W., 208 P.3d 272 (Colo. App. 2009).

Court may not rely on notice given to tribe concerning sibling. Notice was insufficient where court relied on notice given to tribe concerning a sibling to determine another child's membership in, or eligibility to enroll in, the tribe. Although the siblings had the same parents, determination of tribal membership is made on an individual basis and tribe is free to change enrollment criteria at any time. People ex rel. T.M.W., 208 P.3d 272 (Colo. App. 2009).

Notice requirement of the federal Indian Child Welfare Act not sufficiently complied with. People ex rel. J.O., 170 P.3d 840 (Colo. App. 2007); People ex rel. N.D.C., 210 P.3d 494 (Colo. App. 2009); People ex rel. E.C., 259 P.3d 1272 (Colo. App. 2010).

Notice under the federal Indian Child Welfare Act not required when court had no reason to know or believe that child had possible Indian ancestry because mother failed to provide information in that regard during termination proceedings. People ex rel. J.C.R., 259 P.3d 1279 (Colo. App. 2011).

Trial court erred in using the standard of proof beyond a reasonable doubt in termination hearing because, on the date of the termination hearing, the court could not conclude that the child was an Indian child within the meaning of the federal Indian Child Welfare Act. More than 10 days had passed since notice was made to tribes and at least two tribes had responded that the child was not eligible for enrollment. Further, no tribe indicated the child was an Indian child. Although mother provided the department with the child's grandfather's death certificate, and the department had the obligation to make continuing efforts to determine whether the child is an Indian child, the mother should have sought a continuance to require the department to send proper notice based upon information in its possession. Because no tribe responded within the statutory time frame stating that the child was an Indian child within the meaning of the federal Indian Child Welfare Act, the trial court was required to apply the clear and convincing burden of proof at the termination hearing. People ex rel. L.O.L., 197 P.3d 291 (Colo. App. 2008).

Applied in In re People ex rel. A.R.Y.-M., 230 P.3d 1259 (Colo. App. 2010).

19-1-127. Responsibility for placement and care. (1) "Responsibility for placement and care", for purposes of compliance with federal requirements pursuant to the federal "Social Security Act", 42 U.S.C. sec. 672 (2), means the specified entity is considered to have the responsibility for placement and care of a child if:

(a) A county department of social services has entered into a voluntary placement agreement with the parent or guardian of the child;

(b) A court, as a result of a petition for review of need of placement, has determined that a county department of social services shall have continuing placement and care responsibility of the child who entered care pursuant to a voluntary placement;

(c) A court has awarded legal custody of the child to a county department of social services, or has committed the child to the custody of the state department of human services; or

(d) An agency, such as a tribal agency, with which the state department of human services has a contract pursuant to the federal "Social Security Act", has placement and care responsibility of the child pursuant to a voluntary placement agreement or a court order awarding custody of the child to the agency.

Source: L. 2006: Entire section added, p. 507, § 2, effective April 18.

19-1-128. Foster care sibling visits - rules. (1) If a child in foster care and his or her sibling mutually request an opportunity to visit each other, the county department that has legal custody of the child shall arrange the visit within a reasonable amount of time and document the visit.

(2) If a child in foster care and his or her sibling mutually request an opportunity to visit each other on a regular basis, the county department that has legal custody of the child shall

arrange the visits and ensure that the visits occur with sufficient frequency and duration to promote continuity in the siblings' relationship.

(3) If, in arranging sibling visits pursuant to this section, a county department determines that a requested visit between the siblings would not be in the best interests of one or both of the siblings, the county department shall deny the request and document its reasons for making the determination. In determining whether a requested visit would be in the best interests of one or both of the siblings, the county department shall ascertain whether there is pending in any jurisdiction a criminal action in which either of the siblings is either a victim or a witness. If such a criminal action is pending, the county department, before arranging any visit between the siblings, shall consult with the district attorney for the jurisdiction in which the criminal action is pending to determine whether the requested visit may have a detrimental effect upon the prosecution of the pending criminal action.

(4) Nothing in this section shall be construed to require or permit a county department to arrange a sibling visit if such visit would violate an existing protection order in any case pending in this state or any other state.

(5) As used in this section, "sibling" means:

(a) A sibling from birth who is descended from one or two mutual parents; or

(b) A stepbrother or former stepbrother or a stepsister or former stepsister.

(6) The state board of human services, created in section 26-1-107, C.R.S., may promulgate rules for the implementation of this section.

Source: L. 2008: Entire section added, p. 1, § 1, effective August 5.

PART 2

COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

Law reviews: For article "CASA—A Powerful Voice for a Child", see 36 Colo. Law. 97 (October 2007).

19-1-201. Legislative intent. (1) (a) The general assembly hereby finds and declares that quality representation for children requires legal expertise and thorough case monitoring.

(b) The work of community volunteers has been proven to be effective in addressing the needs of children. Partnerships between guardians ad litem and community volunteers can enhance the quality of representation for children.

(c) The general assembly further finds and declares that the state should promote volunteerism and the exercise of responsible citizenship to enable members of local communities to become advocates for children.

(2) Therefore, the general assembly hereby authorizes the creation of volunteer court-appointed special advocate (CASA) programs in order to enhance the quality of representation of children.

Source: L. 96: Entire part added, p. 1090, § 4, effective May 23. **L. 2003:** (2) amended, p. 754, § 5, effective March 25.

19-1-202. Creation of CASA programs. (1) CASA programs may be established in each judicial district or any two or more judicial districts and shall operate pursuant to a memorandum of understanding between the chief judge of the judicial district and the CASA program. The memorandum of understanding shall identify the roles and responsibilities of any CASA volunteer appointed in the judicial district or districts and shall indicate whether any CASA volunteer may be made a party to the action.

(2) A CASA program established pursuant to the provisions of this part 2 shall:

(a) Be a community organization that screens, trains, and supervises CASA volunteers to advocate for the best interests of children in actions brought pursuant to this title and titles 14 and 15, C.R.S.;

(b) Be a member in good standing of the Colorado CASA association and the national CASA association and adhere to the guidelines established by those associations;

(c) Appoint a program director who shall have the responsibilities set forth in section 19-1-203;

(d) Have adequate supervisory and support staff who shall be easily accessible, hold regular case conferences with CASA volunteers to review case progress, and conduct annual performance reviews for all CASA volunteers;

(e) Provide staff and CASA volunteers with written program policies, practices, and procedures;

(f) Provide the training required pursuant to section 19-1-204; and

(g) Attempt to maintain a CASA volunteer-to-supervisor ratio of thirty-to-one.

Source: L. 96: Entire part added, p. 1090, § 4, effective May 23. **L. 2008:** (1) amended, p. 30, § 1, effective March 13.

19-1-203. Program director. (1) The program director shall be responsible for the administration of the CASA program, including recruitment, selection, training, and supervision and evaluation of staff and CASA volunteers.

(2) The program director shall serve as a professional liaison between the court and community agencies serving children.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23.

19-1-204. Training requirements. (1) All CASA volunteers shall participate fully in preservice training, including instruction on recognizing child abuse and neglect, cultural awareness, child development, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation. CASA volunteers shall be required to participate in observation of court proceedings prior to appointment.

(2) All CASA volunteers shall receive a training manual that shall include guidelines for their service and duties.

(3) Each CASA program shall provide a minimum of ten hours of in-service training per year to CASA volunteers.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23.

19-1-205. Selection of CASA volunteers. (1) Each CASA program shall adopt regulations consistent with subsection (2) of this section and with the Colorado CASA association and national CASA association guidelines governing qualifications and selection of CASA volunteers. Each CASA program's regulations shall include provisions that qualified adults shall not be discriminated against based on gender, socioeconomic, religious, racial, ethnic, or age factors.

(2) The minimum qualifications for any prospective CASA volunteer are that he or she shall:

(a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;

(b) Be willing to commit to the court for a minimum of one year of service to a child;

(c) Complete an application, including providing background information required pursuant to subsection (3) of this section;

(d) Participate in a screening interview;

(e) Participate in the training required pursuant to section 19-1-204; and

(f) Meet other qualifications as determined by the CASA program director and the chief judge of the judicial district.

(3) A prospective CASA volunteer's application shall include:

(a) A copy of any criminal history record and motor vehicle record;

(a.5) Written authorization for the CASA program to obtain information contained in any records or reports of child abuse or neglect concerning the prospective CASA volunteer;

(b) At least three references who can address his or her character, judgment, and suitability for the position; and

(c) Records from any other jurisdictions in which he or she resided during the one-year time period prior to the date of the application if the prospective CASA volunteer has resided in the state of Colorado for less than twelve months.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23. **L. 2003:** (3)(a) amended and (3)(a.5) added, p. 1401, § 7, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (3)(a) and enacting subsection (3)(a.5), see section 1 of chapter 196, Session Laws of Colorado 2003.

19-1-206. Appointment of CASA volunteers. (1) Any judge or magistrate may appoint a CASA volunteer in any action brought pursuant to this title and titles 14 and 15, C.R.S., when, in the opinion of the judge or magistrate, a child who may be affected by such action requires services that a CASA volunteer can provide. At the discretion of the judge or magistrate, a CASA volunteer may be a party to the action if so provided for in the memorandum of understanding.

(2) A CASA volunteer shall be appointed at the earliest stages of an action pursuant to a court order that gives him or her the authority to review all relevant documents and interview all parties involved in the case, including parents, other parties in interest, and any other persons having significant information relating to the child.

(3) The CASA volunteer's appointment shall conclude:

(a) When the court's jurisdiction over the child terminates; or

(b) Upon discharge by the court on its own motion or at the request of the program director of the CASA program to which the CASA volunteer is assigned.

Source: L. 96: Entire part added, p. 1092, § 4, effective May 23.

19-1-207. Restrictions. (1) A CASA volunteer shall not:

(a) Accept any compensation for the duties and responsibilities of his or her appointment;

(b) Have any association that creates a conflict of interest with his or her duties;

(c) Be related to any party or attorney involved in a case;

(d) Be employed in a position that could result in a conflict of interest or give rise to the appearance of a conflict;

(e) Use the CASA volunteer position to seek or accept gifts or special privileges.

Source: L. 96: Entire part added, p. 1093, § 4, effective May 23.

19-1-208. Duties of CASA volunteer. (1) **Independent case investigation.** Upon appointment in an action, a CASA volunteer may have the duty to:

(a) Conduct an independent investigation regarding the best interests of the child that will provide factual information to the court regarding the child and the child's family. The investigation shall include interviews with and observations of the child, interviews with other appropriate individuals, and the review of relevant records and reports.

(b) Determine if an appropriate treatment plan, as described in section 19-1-103 (10), has been created for the child, whether appropriate services are being provided to the child and family, and whether the treatment plan is progressing in a timely manner.

(2) **Recommendations.** Unless otherwise ordered by the court, the CASA volunteer, with the support and supervision of the CASA program staff, shall make recommendations consistent with the best interests of the child regarding placement, visitation, and appro-

priate services for the child and family and shall prepare a written report to be distributed to the parties of the action.

(3) **Reports.** The CASA volunteer shall assure that the child's best interests are being advocated at every stage of the case and prepare written reports to be distributed to the parties of the action.

(4) **Case monitoring.** The CASA volunteer shall monitor the case to which he or she has been appointed to assure that the child's essential needs are being met and that the terms of the court's orders have been fulfilled in an appropriate and timely manner.

(5) **Witness.** The CASA volunteer may be called as a witness in an action by any party or the court and may request of the court the opportunity to appear as a witness.

Source: L. 96: Entire part added, p. 1093, § 4, effective May 23. **L. 98:** (1)(b) amended, p. 821, § 24, effective August 5.

19-1-209. Role and responsibilities of guardians ad litem - other parties. (1) (a) Any guardian ad litem, and all state and local agencies, departments, authorities, and institutions shall cooperate and share information with any CASA volunteer appointed to serve on a case and with each local CASA program to facilitate the implementation of its program.

(b) The CASA program will help facilitate the cooperation and sharing of information among CASA volunteers, the attorneys, the county department of social services, and other community agencies.

(2) In any case in which the court has appointed both a CASA volunteer and a guardian ad litem, the CASA volunteer and the guardian ad litem shall cooperate to represent the best interests of the child.

(3) The CASA volunteer shall be notified of hearings, staffings, meetings, and any other proceedings concerning the case to which he or she has been appointed.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-210. Access to information. Upon appointment of a CASA volunteer, the court shall issue an order authorizing access to such records and other information relating to the child, parent, legal guardian, or other parties in interest as the court deems necessary.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-211. Confidentiality. A CASA volunteer shall not disclose the contents of any document, record, or other information relating to a case to which the CASA volunteer has access in the course of an investigation. All such information shall be considered confidential and shall not be disclosed to persons other than the court and parties to the action.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-212. Liability. CASA program directors and volunteers participating in a CASA program shall have the same civil immunity and liability as described in sections 13-21-115.5 and 13-21-115.7, C.R.S.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

PART 3

RECORDS AND INFORMATION

Editor's note: This part 3 was added with relocations in 1996, effective January 1, 1997. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

19-1-301. Short title. This part 3 shall be known and may be cited as the "Children's Code Records and Information Act".

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997.

19-1-302. Legislative declaration. (1) (a) The general assembly declares that information obtained by public agencies in the course of performing their duties and functions under this title is considered public information under the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. The general assembly, however, recognizes that certain information obtained in the course of the implementation of this title is highly sensitive and has an impact on the privacy of children and members of their families. The disclosure of sensitive information carries the risk of stigmatizing children; however, absolute confidentiality of such information may result in duplicated services in some cases, fragmented services in others, and the delivery of ineffective and costly programs and, in some situations, may put other members of the public at risk of harm. In addition, disclosure may result in serving the best interests of the child and may be in the public interest.

(b) Furthermore, the general assembly specifically finds that schools, school districts, and criminal justice agencies attempting to protect children and the public are often frustrated by their lack of ability to exchange information concerning disruptive children who may have experienced disciplinary actions at school or whose actions outside of a school setting may have resulted in contact with local law enforcement. The general assembly finds that schools, school districts, and criminal justice agencies are often better able to assist such disruptive children and to preserve school safety when they are equipped with knowledge concerning a child's history and experiences. The general assembly, however, recognizes that any such sharing of information among and between schools, school districts, and agencies to promote school safety or otherwise to assist disruptive children mandates an awareness of the responsibility on the part of those schools, school districts, and agencies receiving or providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved. The general assembly finds, therefore, that it is desirable to authorize and encourage open communication among appropriate agencies, including criminal justice agencies, assessment centers for children, school districts, and schools, in order to assist disruptive children and to maintain safe schools.

(c) The general assembly further finds that partners in multi-agency assessment centers for children are often frustrated by their lack of ability to exchange information with each other when attempting to serve children and the public. The general assembly finds that assessment centers for children are better able to assist children when they are equipped with knowledge concerning a child's history and experiences. The general assembly, however, recognizes that any such sharing of information among agencies who are part of a multi-agency assessment center for children mandates an awareness of the responsibility on the part of the agencies receiving or providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved.

(d) The general assembly recognizes the importance of children receiving support from all responsible parties and further finds that the state child support enforcement agency and the delegate child support enforcement units have a need to exchange information with other state, federal, and local agencies in order to effectively locate responsible parties; establish paternity and child support, including child support debt pursuant to section 14-14-104, C.R.S.; enforce support orders; disburse collected child support payments; and facilitate the efficient and effective delivery of services under articles 13 and 13.5 of title 26, C.R.S. Therefore, the general assembly recognizes that the state child support enforcement agency and the delegate child support enforcement units need access to the records and databases of the judicial department, the contents of which are otherwise protected under the provisions of this part 3. The general assembly, however, recognizes that any such information sharing mandates an awareness of responsibility on the part of the state child support enforcement agency and the delegate child support enforcement units receiving

information that it be used only for its intended purposes as authorized by law and in accordance with the provisions of section 26-13-102.7, C.R.S., and that the confidential nature of the information be preserved.

(e) The general assembly recognizes the need to make recommendations to the court concerning the many aspects of a child's legal status, including but not limited to existing court orders on placement of the child, legal custody of the child, and orders of protection. Because the population of this state is transitory, and jurisdictional lines for the purpose of court actions are arbitrary, communication of certain information available electronically on a statewide basis may assist state and county agencies, attorneys representing state or county agencies, and attorneys appointed by the court in making recommendations to the court. The general assembly recognizes that any such sharing of information among agencies, attorneys representing agencies, and attorneys appointed by the court mandates an awareness of the responsibility on the part of these agencies, attorneys representing agencies, and attorneys appointed by the court in receiving and providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved.

(2) Therefore, in an effort to balance the best interests of children and the privacy interests of children and their families with the need to share information among service agencies and schools and the need to protect the safety of schools and the public at large, the general assembly enacts the provisions of this part 3.

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997. **L. 2000:** Entire section amended, p. 314, § 1, effective April 7. **L. 2003:** (1)(d) added, p. 1266, § 55, effective July 1. **L. 2008:** (1)(e) added, p. 1241, § 3, effective August 5. **L. 2009:** (1)(a) amended, (SB 09-292), ch. 369, p. 1949, § 35, effective August 5.

19-1-303. General provisions - delinquency and dependency and neglect cases - exchange of information - civil penalty. (1) (a) The judicial department or any agency that performs duties and functions under this title with respect to juvenile delinquency or dependency and neglect cases or any other provisions of this title may exchange information, to the extent necessary, for the acquisition, provision, oversight, or referral of services and support with the judicial department or any other agency or individual, including an attorney representing state or county agencies and an attorney appointed by the court, that performs duties and functions under this title with respect to such cases. In order to receive such information, the judicial department, attorney, or agency shall have a need to know for purposes of investigations and case management in the provision of services or the administration of their respective programs. The judicial department or the agencies shall exchange information in accordance with paragraph (b) of this subsection (1).

(b) The judicial department, an agency, an attorney representing an agency, or an attorney appointed by the court described in paragraph (a) of this subsection (1) shall exchange information with the judicial department or similar agencies or individuals who have a need to know to the extent necessary for the acquisition, provision, oversight, and referral of services and support and if provided in the course of an investigation or for case management purposes. The provision of information by the judicial department shall include electronic read-only access to the name index and register of actions for agencies or attorneys appointed by the court to those case types necessary to carry out their statutory purpose and the duties of their court appointment as provided in this part 3. The state court administrator of the judicial department and the executive directors of the affected agencies shall ensure that there is a process for electronically exchanging information pursuant to this section. Agencies, attorneys, and individuals shall maintain the confidentiality of the information obtained.

(c) Nothing in this section shall require the exchange of information that is subject to the attorney-client privilege under section 13-90-107 (1) (b), C.R.S.

(2) (a) School personnel may obtain from the judicial department or agencies described in paragraph (a) of subsection (1) of this section any information required to perform their legal duties and responsibilities. Said personnel shall maintain the confidentiality of the information obtained.

(b) Notwithstanding any other provision of law to the contrary, any criminal justice agency or assessment center for children in the state may share any information or records concerning a specific child who is or will be enrolled as a student at a school with that school's principal or with the principal's designee and, if the student is or will be enrolled at a public school, with the superintendent of the school district in which the student is or will be enrolled or the superintendent's designee as follows:

(I) Any information or records, except mental health or medical records, relating to incidents that, in the discretion of the agency or center, rise to the level of a public safety concern including, but not limited to, any information or records of threats made by the child, any arrest or charging information, any information regarding municipal ordinance violations, and any arrest or charging information relating to acts that, if committed by an adult, would constitute misdemeanors or felonies; or

(II) Any records, except mental health or medical records, of incidents that such agency or center may have concerning the child that, in the discretion of the agency or center, do not rise to the level of a public safety concern but that relate to the adjudication or conviction of a child for a municipal ordinance violation or that relate to the charging, adjudication, deferred prosecution, deferred judgment, or diversion of a child for an act that, if committed by an adult, would have constituted a misdemeanor or a felony.

(c) Notwithstanding any other provision of law to the contrary, a criminal justice agency investigating a criminal matter or a matter under the "School Attendance Law of 1963", part 1 of article 33 of title 22, C.R.S., concerning a child may seek disciplinary and truancy information from the principal of a school, or the principal's designee, at which the child is or will be enrolled as a student and, if the student is enrolled in a public school, from the superintendent of the school district in which the student is enrolled, or such superintendent's designee. Upon written certification by the criminal justice agency that the information will not be disclosed to any other party, except as specifically authorized or required by law, without the prior written consent of the child's parent, either the principal of the school in which the child is enrolled, or such principal's designee, or, if the student is enrolled in a public school, the superintendent of the school district in which the student is enrolled, or such superintendent's designee, shall provide the child's attendance and disciplinary records to the requesting criminal justice agency. The criminal justice agency receiving such information shall use it only for the performance of its legal duties and responsibilities and shall maintain the confidentiality of the information received.

(d) School and school district personnel receiving information pursuant to this subsection (2) shall use it only in the performance of their legal duties and responsibilities and shall otherwise maintain the confidentiality of the information received. Any information received by a school or a school district pursuant to this subsection (2) that is shared with another school or a school district to which a student may be transferring shall only be shared in compliance with the requirements of federal law.

(2.5) (a) Notwithstanding any other provision of law to the contrary and in addition to the provisions of subsections (1) and (2) of this section, assessment centers for children and the agencies, other than schools and school districts, participating in the local assessment centers for children are authorized to provide and share information, except for mental health or medical records and information, with each other, without the necessity of signed releases, concerning children who have been taken into temporary custody by law enforcement or who have been referred to the assessment center for children for case management purposes. Agencies shall have annually updated signed agreements with assessment centers for children to be considered a participating agency.

(b) For purposes of sharing information pursuant to this subsection (2.5) only, "mental health or medical records and information" shall not include the standardized mental illness screening. An assessment center that conducts a standardized mental illness screening on a child who has been taken into temporary custody by law enforcement or has been referred to the assessment center for children for case management purposes may share the results of such screening, without the necessity of a signed release, with the agencies, other than schools and school districts, participating in the assessment center for children. To receive the results of the standardized mental illness screening, a participating agency shall have a need to know for purposes of investigations and case management in the administration of

its respective programs. Any participating agency receiving such information shall use it only for the performance of its legal duties and responsibilities and shall maintain the confidentiality of the information received, except as may be required pursuant to rule 16 of the Colorado rules of criminal procedure.

(2.7) (a) Upon the receipt of written notice sent by a foster parent, employees of the department of human services and of county departments, or other individuals with a need to know, shall be prohibited from releasing personally identifiable information about a foster parent, other than the foster parent's first name, to any adult member of the foster child's family, unless the foster parent subsequently provides his or her express written consent for the release of the information. The consent may consist of a hand-written note by the foster parent specifying the foster child's name, the consent for release of information to the foster child's family, the foster parent's signature, and the date. The consent shall be given individually for each foster child, unless the foster children are members of a sibling group.

(b) The civil penalty described in subsection (4.7) of this section shall not apply to any foster child or siblings of the foster child.

(3) and (4) (Deleted by amendment, L. 2000, p. 315, § 2, effective April 7, 2000.)

(4.3) School and school district personnel, employees of the state judicial department, employees of state agencies, employees of criminal justice agencies, and employees of assessment centers for children who share information concerning a child pursuant to this part 3 shall be immune from civil and criminal liability if such personnel or employee acted in good faith compliance with the provisions of this part 3.

(4.4) The judicial department, with respect to dependency or neglect cases or any other provisions under this title, shall exchange information, to the extent necessary, with the state child support enforcement agency and the delegate child support enforcement units for the purposes of effectively locating responsible parties, establishing paternity and child support, including child support debt pursuant to section 14-14-104, C.R.S., enforcing support orders, disbursing collected child support payments, and facilitating the efficient and effective delivery of services under articles 13 and 13.5 of title 26, C.R.S.

(4.7) Any person who knowingly violates the confidentiality provisions of this section shall be subject to a civil penalty of up to one thousand dollars.

(5) The provisions of this section shall be in addition to and not in lieu of other statutory provisions of law pertaining to the release of information. Access to information not otherwise addressed by this section shall be governed as otherwise provided by law.

(6) For purposes of this section:

(a) "Assessment center for children" is defined in section 19-1-103 (10.5).

(a.1) "Case management purposes" is defined in section 19-1-103 (16.5).

(a.3) "Criminal justice agency" is defined in section 19-1-103 (34.6).

(b) "Need to know" is defined in section 19-1-103 (77.5).

(c) "School" is defined in section 19-1-103 (94.3).

(7) This section shall be interpreted to promote the best interests of the child and, where possible, the child's family.

(8) to (10) (Deleted by amendment, L. 2008, p. 1242, § 4, effective August 5, 2008.)

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997. **L. 2000:** Entire section amended, p. 315, § 2, effective April 7. **L. 2001:** (2)(c) amended, p. 870, § 1, effective June 1. **L. 2002:** (2.5) amended, p. 575, § 5, effective May 24. **L. 2003:** (4.4) added, p. 1267, § 56, effective July 1. **L. 2004:** (2.7) added, p. 973, § 2, effective August 4. **L. 2007:** (8), (9), and (10) added, p. 1300, § 1, effective July 1. **L. 2008:** (1), (8), (9), and (10) amended, p. 1242, § 4, effective August 5.

Editor's note: Subsection (6)(c) was originally enacted as subsection (6)(a.7) in House Bill 00-1119 but was renumbered on revision in 2003 for ease of location.

19-1-304. Juvenile delinquency records. (1) (a) **Court records - open.** Except as provided in paragraph (b.5) of this subsection (1), court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any

municipal ordinance except a traffic ordinance shall be open to inspection to the following persons without court order:

(I) The juvenile named in said record;

(II) The juvenile's parent, guardian, or legal custodian;

(III) Any attorney of record;

(IV) The juvenile's guardian ad litem;

(V) The juvenile probation department and the adult probation department for purposes of a presentence investigation and the preparation of a presentence report as described in section 16-11-102 (1) (a), C.R.S.;

(VI) Any agency to which legal custody of the juvenile has been transferred;

(VII) Any law enforcement agency or police department in the state of Colorado;

(VII.5) The Colorado bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase;

(VIII) A court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IX) Any attorney of record in a juvenile or domestic action in which the juvenile is named;

(X) The state department of human services;

(XI) Any person conducting an evaluation pursuant to section 14-10-127, C.R.S.;

(XII) All members of a child protection team;

(XIII) Any person or agency for research purposes, if all of the following conditions are met:

(A) The person or agency conducting such research is employed by the state of Colorado or is under contract with the state of Colorado and is authorized by the department of human services to conduct such research; and

(B) The person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

(XIV) The victim and the complaining party, if different, identified in the court file;

(XV) The department of corrections for aid in determinations of recommended treatment, visitation approval, and supervised conditions;

(XVI) The principal, or the principal's designee, of a school in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee;

(XVII) The department of education when acting pursuant section 22-2-119, C.R.S., or pursuant to the "Colorado Educator Licensing Act of 1991", article 60.5 of title 22, C.R.S.

(b) **Court records - limited.** With consent of the court, records of court proceedings in delinquency cases may be inspected by any other person having a legitimate interest in the proceedings.

(b.5) **Arrest and criminal records - certain juveniles - public access - information limited.** The public has access to arrest and criminal records information, as defined in section 24-72-302 (1), C.R.S., and including a person's physical description, that:

(I) Is in the custody of the investigating law enforcement agency, the agency responsible for filing a petition against the juvenile, and the court; and

(II) Concerns a juvenile who:

(A) Is adjudicated a juvenile delinquent or is subject to a revocation of probation for committing the crime of possession of a handgun by a juvenile or for committing an act that would constitute a class 1, 2, 3, or 4 felony or would constitute any crime that involves the use or possession of a weapon if such act were committed by an adult; or

(B) Is charged with the commission of any act described in sub-subparagraph (A) of this subparagraph (II).

(b.7) The information which shall be open to the public pursuant to paragraph (b.5) regarding a juvenile who is charged with the commission of a delinquent act shall not include records of investigation as such records are described in section 24-72-305 (5),

C.R.S. In addition, any psychological profile of any such juvenile, any intelligence test results for any such juvenile, or any information regarding whether such juvenile has been sexually abused shall not be open to the public unless released by an order of the court.

(b.8) The court shall report the final disposition concerning a juvenile who has been adjudicated a juvenile delinquent to the Colorado bureau of investigation in a form that is electronically consistent with applicable law. The report shall be made within seventy-two hours after the final disposition; except that the time period shall not include Saturdays, Sundays, or legal holidays. The report shall include the information provided to the court in accordance with paragraph (b.7) of this subsection (1), the disposition of each charge, and the court case number, and the Colorado bureau of investigation shall reflect any change of status but shall not delete or eliminate information concerning the original charge.

(c) **Probation records - limited access.** Except as otherwise authorized by section 19-1-303, a juvenile probation officer's records, whether or not part of the court file, shall not be open to inspection except as provided in subparagraphs (I) to (XI) of this paragraph (c):

(I) To persons who have the consent of the court;

(II) To law enforcement officers, as defined in section 19-1-103 (72), and to fire investigators, as defined in section 19-1-103 (51). The inspection shall be limited to the following information:

(A) Basic identification information as defined in section 24-72-302 (2), C.R.S.;

(B) Details of the offense and delinquent acts charged;

(C) Restitution information;

(D) Juvenile record;

(E) Probation officer's assessment and recommendations;

(F) Conviction or plea and plea agreement, if any;

(G) Sentencing information; and

(H) Summary of behavior while the juvenile was in detention, if any;

(II.5) To the Colorado bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase. The inspection shall be limited to the information identified in sub-subparagraphs (A) to (H) of subparagraph (II) of this paragraph (c).

(III) To a court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IV) To any attorney of record in a juvenile or domestic action in which the juvenile is named;

(V) To the state department of human services;

(VI) To any person conducting an evaluation pursuant to section 14-10-127, C.R.S.;

(VII) To all members of a child protection team;

(VIII) To the juvenile's parent, guardian, or legal custodian;

(IX) To the juvenile's guardian ad litem;

(X) To the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee; or

(XI) To the department of education when acting pursuant to section 22-2-119, C.R.S., or pursuant to the "Colorado Educator Licensing Act of 1991", article 60.5 of title 22, C.R.S.

(d) **Social and clinical studies - closed - court authorization.** Except as otherwise authorized by section 19-1-303, any social and clinical studies, whether or not part of the court file, shall not be open to inspection except by consent of the court.

(2) (a) **Law enforcement records in general - closed.** Except as otherwise provided by paragraph (b.5) of subsection (1) of this section and otherwise authorized by section 19-1-303, the records of law enforcement officers concerning juveniles, including identifying information, shall be identified as juvenile records and shall not be inspected by or disclosed to the public, except:

(I) To the juvenile and the juvenile's parent, guardian, or legal custodian;

(II) To other law enforcement agencies and to fire investigators, as defined in section 19-1-103 (51), who have a legitimate need for such information;

(II.5) To the Colorado bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase;

(III) To the victim and the complaining party, if different, in each case after authorization by the district attorney or prosecuting attorney;

(IV) When the juvenile has escaped from an institution to which such juvenile has been committed;

(V) When the court orders that the juvenile be tried as an adult criminal;

(VI) When there has been an adult criminal conviction and a presentence investigation has been ordered by the court;

(VII) By order of the court;

(VIII) To a court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IX) To any attorney of record in a juvenile or domestic action in which the juvenile is named;

(X) To the state department of human services;

(XI) To any person conducting an evaluation pursuant to section 14-10-127, C.R.S.;

(XII) To all members of a child protection team;

(XIII) To the juvenile's guardian ad litem;

(XIV) To any person or agency for research purposes, if all of the following conditions are met:

(A) The person or agency conducting such research is employed by the state of Colorado or is under contract with the state of Colorado and is authorized by the department of human services to conduct such research; and

(B) The person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

(XV) To the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee;

(XVI) To assessment centers for children;

(XVII) To the department of education when acting pursuant to section 22-2-119, C.R.S., or pursuant to the "Colorado Educator Licensing Act of 1991", article 60.5 of title 22, C.R.S.

(b) The fingerprints, photograph, name, address, and other identifying information regarding a juvenile may be transmitted to the Colorado bureau of investigation to assist in any apprehension or investigation and for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase.

(2.5) **Parole records.** Parole records shall be open to inspection by the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, by the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee. Parole records shall also be open to inspection by assessment centers for children.

(3) Prior to adjudication, the defense counsel, the district attorney, the prosecuting attorney, or any other party with consent of the court shall have access to records of any proceedings pursuant to this title, except as provided in section 19-1-309, which involve a juvenile against whom criminal or delinquency charges have been filed. No new criminal or delinquency charges against such juvenile shall be brought based upon information gained initially or solely from such examination of records.

(4) For the purpose of making recommendations concerning sentencing after an adjudication of delinquency, the defense counsel and the district attorney or prosecuting attorney shall have access to records of any proceedings involving the adjudicated juvenile pursuant to this title, except as provided in sections 19-1-307, 19-1-308, and 19-1-309. No

new criminal or delinquency charges against the adjudicated juvenile shall be brought based upon information gained initially or solely from such examination of records.

(5) **Direct filings - arrest and criminal records open.** Whenever a petition filed in juvenile court alleges that a juvenile between the ages of twelve to eighteen years has committed an offense that would constitute unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., or a crime of violence, as defined in section 18-1.3-406, C.R.S., if committed by an adult or whenever charges filed in district court allege that a juvenile has committed such an offense, then the arrest and criminal records information, as defined in section 24-72-302 (1), C.R.S., and including a juvenile's physical description, concerning such juvenile shall be made available to the public. The information is available only from the investigative law enforcement agency, the agency responsible for filing a petition, and the court, and shall not include records of investigation as such records are described in section 24-72-305 (5), C.R.S. Basic identification information, as defined in section 24-72-302 (2), C.R.S., along with the details of the alleged delinquent act or offense, shall be provided immediately to the school district in which the juvenile is enrolled. Such information shall be used by the board of education for purposes of section 22-33-105 (5), C.R.S., but information made available to the school district and not otherwise available to the public shall remain confidential.

(5.5) Whenever a petition is filed in juvenile court involving a felony or a class 1 misdemeanor or the following offenses of any degree: Menacing, in violation of section 18-3-206, C.R.S.; harassment, in violation of section 18-9-111, C.R.S.; fourth degree arson, in violation of section 18-4-105, C.R.S.; theft, in violation of section 18-4-401, C.R.S.; aggravated motor vehicle theft, in violation of section 18-4-409, C.R.S.; criminal mischief, in violation of section 18-4-501, C.R.S.; defacing property, in violation of section 18-4-509, C.R.S.; disorderly conduct, in violation of section 18-9-106, C.R.S.; hazing, in violation of section 18-9-124, C.R.S.; or possession of a handgun by a juvenile, in violation of section 18-12-108.5, C.R.S., the prosecuting attorney, within three working days after the petition is filed, shall make good faith reasonable efforts to notify the principal of the school in which the juvenile is enrolled and shall provide such principal with the arrest and criminal records information, as defined in section 24-72-302 (1), C.R.S. In the event the prosecuting attorney, in good faith, is not able to either identify the school which the juvenile attends or contact the principal of the juvenile's school, then the prosecuting attorney shall contact the superintendent of the juvenile's school district.

(6) The department of human services shall release to the committing court, the district attorney, the Colorado bureau of investigation, and local law enforcement agencies basic identification information as defined in section 24-72-302 (2), C.R.S., concerning any juvenile released or released to parole supervision or any juvenile who escapes.

(7) In addition to the persons who have access to court records pursuant to paragraph (a) of subsection (1) of this section, statewide electronic read-only access to the name index and register of actions of the judicial department shall be allowed to the following agencies or attorneys appointed by the court:

(a) County departments, as defined in section 19-1-103 (32), and attorneys who represent the county departments as county attorneys, as defined in section 19-1-103 (31.5), as it relates to the attorneys' work representing the county;

(b) The office of the state public defender, created in section 21-1-101, C.R.S.;

(c) Guardians ad litem under contract with the office of the child's representative, created in section 13-91-104, C.R.S., or authorized by the office of the child's representative to act as a guardian ad litem, as it relates to a case in which they are appointed by the court;

(d) Attorneys under contract with the office of the alternate defense counsel, created in section 21-2-101, C.R.S., as it relates to a case in which they are appointed by the court; and

(e) Respondent parent counsel appointed by the court and paid by the judicial department as it relates to a case in which they are appointed by the court.

Source: L. 96: Entire part added with relocations, p. 1158, § 6, effective January 1, 1997; (1)(a)(XV) added, p. 1587, § 15, effective January 1, 1997. **L. 98:** (1)(a)(XI), (1)(c)(VI), and (2)(a)(XI) amended, p. 1407, § 66, effective February 1, 1999. **L. 99:** (1)(a)(V) amended, p. 316, § 5, effective July 1; (5) amended, p. 1144, § 1, effective July

1. **L. 2000:** (1)(b.8) added, p. 12, § 5, effective March 7; (1)(a)(VII.5), (1)(c)(II.5), and (2)(a)(II.5) added and (2)(b) amended, pp. 226, 227, §§ 1, 2, 3, 4, effective March 29; (1)(a)(XVI), (1)(c)(X), (2)(a)(XV), (2)(a)(XVI), and (2.5) added and IP(1)(c) and (5) amended, pp. 319, 320, §§ 3, 4, 5, 6, 9, effective April 7; (1)(a)(XVI), (1)(c)(X), and (5.5) added and IP(1)(c) amended, pp. 1964, 1965, §§ 6, 7, 8, effective June 2. **L. 2001:** (5.5) amended, p. 138, § 3, effective July 1. **L. 2002:** (5) amended, p. 1187, § 23, effective July 1; (5) amended, p. 1522, § 222, effective October 1. **L. 2003:** (1)(c)(II.5) amended, p. 1991, § 33, effective May 22. **L. 2008:** (1)(a)(XVII), (1)(c)(XI), and (2)(a)(XVII) added and IP(1)(c), (1)(c)(IX), and (1)(c)(X) amended, pp. 1667, 1668, §§ 10, 11, 12, effective May 29; (7) added, p. 1243, § 5, effective August 5.

Editor's note: (1) This section was formerly numbered as § 19-1-119.

(2) Amendments to subsection (1)(a)(XVI) by Senate Bill 00-133 and House Bill 00-1119 were harmonized.

(3) (a) Amendments to the introductory portion to subsection (1)(c) by Senate Bill 00-133 and House Bill 00-1119 were harmonized.

(b) Subsection (1)(c)(XI) as enacted by Senate Bill 00-133 was renumbered as (1)(c)(X) and harmonized with subsection (1)(c)(X) as enacted by House Bill 00-1119.

(4) Amendments to subsection (5) by House Bill 02-1046 and Senate Bill 02-010 were harmonized.

(5) Subsection (7) was originally numbered as (8.5) in House Bill 08-1264 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 2000 act enacting subsection (1)(b.8), see section 1 of chapter 5, Session Laws of Colorado 2000. For the legislative declaration contained in the 2002 act amending subsection (5), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The disposition of arrest records is subject to legislative control. Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972).

The Colorado Children's Code does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

C.R.C.P. 24 has no application in proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

19-1-305. Operation of juvenile facilities. (1) Except as otherwise authorized by section 19-1-303, all records prepared or obtained by the department of human services in the course of carrying out its duties pursuant to article 2 of this title shall be confidential and privileged. Said records may be disclosed only:

(a) To the parents, legal guardian, legal custodian, attorney for the juvenile, district attorney, guardian ad litem, law enforcement official, and probation officer;

(b) In communications between appropriate personnel in the course of providing services or in order to facilitate appropriate referrals for services;

(c) To the extent necessary to make application for or to make claims on behalf of the juvenile who is eligible to receive aid, insurance, federal or state assistance, or medical assistance;

(d) To the court as necessary for the administration of the provisions of article 2 of this title;

(e) To persons authorized by court order after notice and a hearing, to the juvenile, and to the custodian of the record;

(f) For research or evaluation purposes pursuant to rules regarding research or evaluation promulgated by the department of human services. Any rules so promulgated shall

require that persons receiving information for research or evaluation purposes are required to keep such information confidential; and

(g) To the department of revenue pursuant to sections 39-22-120 and 39-22-2003, C.R.S.

(2) Nothing in this section shall be construed to limit the effect of any other provision of this part 3 which requires the confidentiality of records under the control of the department of human services.

Source: L. 96: Entire part added with relocations, p. 1163, § 6, effective January 1, 1997. **L. 98, 2nd Ex. Sess.:** (1)(e) and (1)(f) amended and (1)(g) added, p. 7, § 3, effective September 16. **L. 99:** (1)(g) amended, p. 1317, § 4, effective August 4.

Editor's note: This section was formerly numbered as 19-2-1104.5.

19-1-306. Expungement of juvenile delinquent records. (1) For the purposes of this section, "expungement" is defined in section 19-1-103 (48). Upon the entry of an expungement order, the person, agency, and court may properly indicate that no record exists.

(2) (a) The court shall advise any person of the right to petition the court for the expungement of such person's record at the time of adjudication, or the court, on its own motion or the motion of the juvenile probation department or the juvenile parole department, may initiate expungement proceedings concerning the record of any juvenile who has been under the jurisdiction of the court.

(b) Expungement shall be effectuated by physically sealing or conspicuously indicating on the face of the record or at the beginning of the computerized file of the record that said record has been designated as expunged.

(3) Basic identification information on the juvenile and a list of any state and local agencies and officials having contact with the juvenile, as they appear from the records, shall not be open to the public but shall be available to a district attorney, local law enforcement agency, and the department of human services; except that such information shall not be available to an agency of the military forces of the United States.

(4) Records designated as expunged may only be inspected by order of the court, after a hearing and good cause shown. Notice of said hearing shall be given to all interested parties at least five days in advance of such hearing.

(5) (a) Expungement proceedings shall be initiated by the filing of a petition in the appropriate juvenile court requesting an order of expungement. No filing fee shall be required. Any record that is ordered expunged shall, notwithstanding any such order for expungement, be available to any judge and the probation department for use in any future juvenile or adult sentencing hearing regarding the person whose record was expunged.

(b) Upon the filing of a petition, the court shall set a date for a hearing on the petition for expungement and shall notify the appropriate prosecuting agency and anyone else whom the court has reason to believe may have relevant information related to the expungement of the record.

(c) The court may order expunged all records in the petitioner's case in the custody of the court and any records in the custody of any other agency or official if at the hearing the court finds that:

(I) The petitioner who is the subject of the hearing has not been convicted of a felony or of a misdemeanor and has not been adjudicated a juvenile delinquent since the termination of the court's jurisdiction or the petitioner's unconditional release from parole supervision;

(II) No proceeding concerning a felony, misdemeanor, or delinquency action is pending or being instituted against the petitioner;

(III) The rehabilitation of the petitioner has been attained to the satisfaction of the court; and

(IV) The expungement is in the best interests of the petitioner and the community.

(d) The court shall order expunged all records in the custody of the court and any records in the custody of any other agency or official that pertain to the petitioner's

conviction for prostitution, as described in section 18-7-201, C.R.S.; soliciting for prostitution, as described in section 18-7-202, C.R.S.; keeping a place of prostitution, as described in section 18-7-204, C.R.S.; public indecency, as described in section 18-7-301, C.R.S.; soliciting for child prostitution, as described in section 18-7-402, C.R.S., or any corresponding municipal code or ordinance if, at the hearing, the court finds that the petitioner who is the subject of the hearing has established by a preponderance of the evidence that, at the time he or she committed the offense, he or she:

(I) Had been sold, exchanged, bartered, or leased by another person, as described in section 18-3-501 or 18-3-502, C.R.S., for the purpose of performing the offense; or

(II) Was coerced by another person, as described in section 18-3-503, C.R.S., to perform the offense.

(6) A person is eligible to petition for an expungement order:

(a) Immediately upon a finding of not guilty at an adjudicatory trial;

(a.5) At any time for the purposes described in paragraph (d) of subsection (5) of this section;

(b) One year from:

(I) The date of a law enforcement contact that did not result in a referral to another agency;

(II) The completion of a juvenile diversion program or informal adjustment;

(c) Four years from the date of:

(I) The termination of the court's jurisdiction over the petitioner;

(II) The petitioner's unconditional release from commitment to the department of human services; or

(III) The petitioner's unconditional release from parole supervision;

(IV) (Deleted by amendment, L. 96, p. 1163, § 6, effective January 1, 1997.)

(d) Ten years from the date of the termination of the court's jurisdiction over the juvenile or the juvenile's unconditional release from parole supervision, whichever date is later, if the juvenile has been adjudicated a repeat or mandatory juvenile offender and if the juvenile has not further violated any criminal statute.

(7) The following persons are not eligible to petition for the expungement of any juvenile record:

(a) Any person who has been adjudicated as an aggravated juvenile offender or a violent juvenile offender;

(b) Any person who has been adjudicated for an offense that would constitute a crime of violence under section 18-1.3-406, C.R.S., had the person been an adult at the time the offense was committed;

(c) Any person who, as a juvenile, has been charged by the direct filing of an information in the district court or by indictment pursuant to section 19-2-517, unless the person was sentenced as a juvenile in the same matter;

(d) Any person who has been adjudicated for an offense involving unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S.

(8) A person may file a petition with the court for expungement of his or her record only once during any twelve-month period.

(9) Repealed.

Source: L. 96: Entire part added with relocations, p. 1163, § 6, effective January 1, 1997; (9) added, p. 1588, § 18, effective January 1, 1997. **L. 98:** (7)(d) added and (9) repealed, p. 399, §§ 4, 5, effective April 21. **L. 2002:** (7)(d) amended, p. 1187, § 24, effective July 1; (7)(b) amended, p. 1523, § 223, effective October 1. **L. 2009:** (7)(c) amended, (HB 09-1044), ch. 19, p. 96, § 1, effective September 1. **L. 2012:** (5)(d) and (6)(a.5) added, (HB 12-1151), ch. 174, p. 623, § 6, effective August 8.

Editor's note: This section was formerly numbered as 19-2-902. The said section 19-2-902 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (7)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The disposition of arrest records is subject to legislative control. Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972).

The general assembly did not intend that the limitation on expungement set forth in subsection (7)(d) apply to a person who has successfully completed a deferred adjudication. C.B. v. People, 122 P.3d 1065 (Colo. App. 2005).

The Colorado Children's Code does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

C.R.C.P. 24 has no application in proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Since § 24-72-308 concerns the sealing of criminal records and juvenile delinquency proceedings are noncriminal in nature, the trial court should have proceeded under the expungement provisions set forth in this section when considering a petition to seal arrest and criminal records relating to a juvenile delinquency case. C.B. v. People, 122 P.3d 1065 (Colo. App. 2005).

19-1-307. Dependency and neglect records and information - access - fee - rules - records and reports fund - misuse of information - penalty. (1) (a) **Identifying information - confidential.** Except as otherwise provided in this section and section 19-1-303, reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

(b) **Good cause exception.** Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record or the alleged juvenile offender is or was a victim of abuse or neglect or the suspected or alleged perpetrator becomes the subject of an arrest by a law enforcement agency or the subject of the filing of a formal charge by a law enforcement agency.

(c) Any person who violates any provision of this subsection (1) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

(2) **Records and reports - access to certain persons - agencies.** Except as otherwise provided in section 19-1-303, only the following persons or agencies shall be given access to child abuse or neglect records and reports:

(a) The law enforcement agency, district attorney, coroner, or county or district department of social services investigating a report of a known or suspected incident of child abuse or neglect or treating a child or family which is the subject of the report;

(b) A physician who has before him or her a child whom the physician reasonably suspects to be abused or neglected;

(c) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare, including, in the case of an anatomical gift, a coroner and a procurement organization, as those terms are defined in section 12-34-102, C.R.S.;

(d) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his or her guardian ad litem;

(e) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, or the assigned designee of any such person acting by and through a validly executed power of attorney, with protection for the identity of reporters and other appropriate persons;

(e.5) (I) A mandatory reporter specified in this subparagraph (I) who is and continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report, but only with regard to information that the mandatory reporter has a need to know in order to fulfill his or her professional and official role in maintaining the child's safety. A county department shall request written affirmation from a mandatory reporter stating that the reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report and describing the nature of the involvement, unless the county department has actual knowledge that the mandatory reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report. This subparagraph (I) applies to:

(A) Hospital personnel engaged in the admission, care, or treatment of children;

(B) Mental health professionals;

(C) Physicians or surgeons, including physicians in training;

(D) Registered nurses or licensed practical nurses;

(E) Dentists;

(F) Psychologists;

(G) Registered psychotherapists;

(H) Licensed professional counselors;

(I) Licensed marriage and family therapists;

(J) Public or private school officials or employees;

(K) Social workers or workers with any facility or agency that is licensed or certified pursuant to part 1 of article 6 of title 26, C.R.S.;

(L) Victim's advocates, as defined in section 13-90-107 (1) (k) (II), C.R.S.;

(M) Clergy members, as defined in section 19-3-304 (2) (aa) (III); and

(N) Educators providing services through a federal special supplemental nutrition program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786.

(II) Within thirty calendar days after receipt of a report of suspected child abuse or neglect from a mandatory reporter specified in subparagraph (I) of this paragraph (e.5), a county department shall provide the following information to the mandatory reporter for the purpose of assisting the mandatory reporter in his or her professional and official role in maintaining the child's safety:

(A) The name of the child and the date of the report;

(B) Whether the referral was accepted for assessment;

(C) Whether the referral was closed without services;

(D) Whether the assessment resulted in services related to the safety of the child;

(E) The name of and contact information for the county caseworker responsible for investigating the referral; and

(F) Notice that the reporting mandatory reporter may request updated information identified in sub-subparagraphs (A) to (E) of this subparagraph (II) within ninety calendar days after the county department received the report and information concerning the procedure for obtaining updated information.

(III) Information disclosed to a mandatory reporter pursuant to this paragraph (e.5) is confidential and shall not be disclosed by the mandatory reporter to any other person except as provided by law.

(IV) Unless requested by a county department, a mandatory reporter shall not have the authority to participate in any decision made by the county department concerning a report of abuse or neglect.

(V) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the state department shall promulgate any rules necessary for the implementation of this paragraph (e.5).

(f) A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

(g) (Deleted by amendment, L. 2003, p. 1401, § 8, effective January 1, 2004.)

(h) All members of a child protection team;

(i) Such other persons as a court may determine, for good cause;

(j) The state department of human services or a county or district department of social services or a child placement agency investigating an applicant for a license to operate a child care facility or agency pursuant to section 26-6-107, C.R.S., when the applicant, as a requirement of the license application, has given written authorization to the licensing authority to obtain information contained in records or reports of child abuse or neglect. Access to the records and reports of child abuse or neglect granted to the named department or agencies shall serve only as the basis for further investigation.

(j.5) The state department of human services or a county or district department of social services investigating an exempt family child care home provider pursuant to section 26-6-120, C.R.S., as a prerequisite to issuance or renewal of a contract or any payment agreement to receive moneys for the care of a child from publicly funded state child care assistance programs. Access to the records and reports of child abuse or neglect granted to the named department or agencies shall serve only as the basis for further investigation.

(j.7) The state department of human services investigating an applicant for an employee or volunteer position with, or an employee or volunteer of, a licensed neighborhood youth organization pursuant to section 26-6-103.7 (4), C.R.S., when the applicant, employee, or volunteer has given written authorization to the state department of human services to check records or reports of child abuse or neglect;

(k) The state department of human services, when requested in writing by any operator of a facility or agency that is licensed by the state department of human services pursuant to section 26-6-107, C.R.S., to check records or reports of child abuse or neglect for the purpose of screening an applicant for employment or a current employee. Any such operator who requests such information concerning an individual who is neither a current employee nor an applicant for employment commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Within ten days of the operator's request, the state department of human services shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county which investigated the incident contained in the confirmed reports of child abuse and neglect. Any such operator who releases any information obtained under this paragraph (k) to any other person shall be deemed to have violated the provisions of subsection (4) of this section and shall be subject to the penalty therefor.

(k.5) The state department of human services, when requested in writing by a qualified county department of social services, individual, or child placement agency approved to conduct home study investigations and reports pursuant to section 19-5-207.5 (2) (b) (I) for purposes of screening a prospective adoptive parent or any adult residing in the home under section 19-5-207 (2.5) (c), or investigating a prospective family foster care parent, kinship care parent, or an adult residing in the home under section 26-6-107 (1) (a.7), C.R.S. Within ten days after the request, the state department of human services shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse or neglect. The county department, individual, or child placement agency shall be subject to the fee assessment established in subsection (2.5) of this section. With respect to screening a prospective adoptive parent, any employee of the county department or the child placement agency or any individual who releases any information obtained under this paragraph (k.5) to any person other than the adoption court shall be deemed to have violated the provisions of subsection (4) of this section and shall be subject to penalty therefor.

(l) The state department of human services, when requested in writing by the department of education to check records or reports of child abuse or neglect for the purpose of aiding the department of education in its investigation of an allegation of abuse by an employee of a school district in this state. Within ten days of the department of education's request, the state department of human services shall provide the date of the report of the incident, the location of investigation, the type of abuse or neglect, and the county which investigated the incident contained in the confirmed reports of child abuse or neglect. The department of education shall be subject to the fee assessment established in subsection (2.5) of this section. Any employee of the department of education who releases any information obtained under this paragraph (l) to any person not authorized to receive such information pursuant to the provisions of section 22-32-109.7, C.R.S., or any member of the

board of education of a school district who releases such information obtained pursuant to said section shall be deemed to have violated the provisions of subsection (4) of this section and shall be subject to the penalty therefor.

(m) The state department of human services and the county departments of social services, for the following purposes:

(I) Screening any person who seeks employment with, is currently employed by, or who volunteers for service with the state department of human services, department of health care policy and financing, or a county department of social services, if such person's responsibilities include direct contact with children;

(II) Conducting evaluations pursuant to section 14-10-127, C.R.S.;

(III) Screening any person who will be responsible to provide child care pursuant to a contract with a county department for placements out of the home or private child care;

(IV) Screening prospective adoptive parents;

(n) Private adoption agencies, including private adoption agencies located in other states, for the purpose of screening prospective adoptive parents;

(o) A person, agency, or organization engaged in a bona fide research or evaluation project or audit, but without information identifying individuals named in a report, unless having said identifying information open for review is essential to the research and evaluation, in which case the executive director of the state department of human services shall give prior written approval and the child through a legal representative shall give permission to release the identifying information;

(p) The governing body as defined in section 19-1-103 (54) and the citizen review panels created pursuant to section 19-3-211, for the purposes of carrying out their conflict resolution duties as set forth in section 19-3-211 and rules promulgated by the state department of human services;

(q) (Deleted by amendment, L. 2003, p. 1401, § 8, effective January 1, 2004.)

(r) The state department of human services investigating an applicant for a supervisory employee position or an employee of a guest child care facility or a public services short-term child care facility pursuant to section 26-6-103.5, C.R.S., when the applicant or employee, as a requirement of application for employment, has given written authorization to the state department of human services to check records or reports of child abuse or neglect;

(s) The state department of human services investigating a prospective CASA volunteer for the CASA program when the prospective CASA volunteer has given written authorization to the CASA program to check any records or reports of child abuse or neglect pursuant to section 19-1-205 (3) (a.5);

(t) State, county, and local government agencies of other states and child placement agencies located in other states, for the purpose of screening prospective foster or adoptive parents or any adult residing in the home of the prospective foster or adoptive parents;

(u) The child protection ombudsman program created in section 19-3.3-102, when conducting an investigation pursuant to article 3.3 of this title.

(2.3) The following agencies or attorneys appointed by the court shall be granted statewide read-only access to the name index and register of actions for the judiciary department:

(a) Criminal justice agencies as described in section 24-72-302 (3), C.R.S.;

(b) County departments as defined in section 19-1-103 (32) and attorneys who represent the county departments as county attorneys, as defined in section 19-1-103 (31.5), as it relates to the attorneys' work representing the county;

(c) Guardians ad litem under contract with the office of the child's representative, created in section 13-91-104, C.R.S., or authorized by the office of the child's representative to act as a guardian ad litem, as it relates to a case in which they are appointed by the court; and

(d) Respondent parent counsel appointed by the court and paid by the judicial department as it relates to a case in which they are appointed by the court.

(2.5) **Fee - rules - records and reports fund.** Any person or agency provided information from the state department of human services pursuant to paragraph (i), paragraphs (k) to (o), and paragraph (t) of subsection (2) of this section and any child placement agency shall be assessed a fee that shall be established and collected by the state department of human services pursuant to parameters set forth in rule established by the state board of human services. At a minimum, the rules shall include a provision requiring the state department of human services to provide notice of the fee to interested persons and the maximum fee amount that the department shall not exceed without the express approval of the state board of human services. The fee established shall not exceed the direct and indirect costs of administering paragraph (i), paragraphs (k) to (o), and paragraph (t) of subsection (2) of this section and the direct and indirect costs of administering section 19-3-313.5 (3) and (4). All fees collected in accordance with this subsection (2.5) shall be transmitted to the state treasurer who shall credit the same to the records and reports fund, which fund is hereby created. On January 1, 2004, the state treasurer shall transfer the moneys in the central registry fund created in section 19-3-313 (14), as it existed prior to its repeal in 2004, to the records and reports fund created in this subsection (2.5). The moneys in the records and reports fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of administering paragraph (i), paragraphs (k) to (o), and paragraph (t) of subsection (2) of this section and for the direct and indirect costs of administering section 19-3-313.5 (3) and (4).

(3) After a child who is the subject of a report to the state department of human services reaches the age of eighteen years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (2) of this section and is a suspected victim of child abuse or neglect.

(4) Any person who improperly releases or who willfully permits or encourages the release of data or information contained in the records and reports of child abuse or neglect to persons not permitted access to such information by this section or by section 19-1-303 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 96: Entire part added with relocations, p. 1166, § 6, effective January 1, 1997; (2)(q) added and (2.5) amended, pp. 1587, 1588, §§ 16, 17, effective January 1, 1997. **L. 98:** IP(2) and (2)(p) amended, p. 821, § 25, effective August 5; (2)(m)(II) amended, p. 1408, § 67, effective February 1, 1999. **L. 99:** (2)(k.5) added, p. 1025, § 10, effective May 29. **L. 2002:** (2)(e) amended, p. 1809, § 2, effective July 1; (2)(r) added, p. 411, § 3, effective July 1; (2)(k) amended, p. 1523, § 224, effective October 1. **L. 2003:** (2), (2.5), and (3) amended and (4) added, p. 1401, § 8, effective January 1, 2004. **L. 2006:** (2)(j.5) added, p. 1084, § 5, effective May 25. **L. 2007:** (2)(j.5) amended, p. 318, § 3, effective April 2; (2)(r) amended, p. 866, § 3, effective May 14; (2)(k.5), (2)(n), and (2.5) amended and (2)(t) added, p. 1015, § 1, effective May 22; (2)(c) amended, p. 798, § 7, effective July 1. **L. 2008:** (2.3) added, p. 1243, § 6, effective August 5; (2.5) amended, p. 1892, § 62, effective August 5. **L. 2010:** (2)(j.7) added, (HB 10-1044), ch. 85, p. 288, § 3, effective April 14; (2)(u) added, (SB 10-171), ch. 225, p. 982, § 3, effective May 14; (2)(e.5) added, (SB 10-152), ch. 224, p. 971, § 1, effective September 1. **L. 2011:** IP(2)(e.5)(I) and (2)(e.5)(I)(G) amended, (SB 11-187), ch. 285, p. 1327, § 70, effective July 1; (2)(j.7) amended, (HB 11-1145), ch. 163, p. 563, § 5, effective August 10; IP(2)(e.5)(I), (2)(e.5)(I)(L), and (2)(e.5)(I)(M) amended and (2)(e.5)(I)(N) added, (SB 11-034), ch. 125, p. 390, § 2, effective January 1, 2012.

Editor's note: (1) This section was formerly numbered as § 19-1-120.

(2) Amendments to the introductory portion to subsection (2)(e.5)(I) by Senate Bill 11-187 and Senate Bill 11-034 were harmonized, effective January 1, 2011.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(k), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2003 act amending subsections (2), (2.5), and (3) and enacting subsection (4), see section 1 of chapter 196, Session Laws of Colorado 2003.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The child protection team is subject to the provisions of the public meetings law, § 29-9-101, since it is a committee of a political subdivision of the state. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Coverage of confidentiality provision. The confidentiality provision of this article covers the entire contents of a child abuse report and the records related thereto. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Matters to be handled at open meetings. Discussion of matters not contained in reports, and which do not pertain to identifying information, are not appropriate subjects for executive session. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

The child protection team's consideration of questions other than those on specific cases, such as agency availability and responsiveness to reports of child abuse, must be handled in meetings open to the public. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Subsection (2) does not provide equal access to social services records in a criminal case. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Subsection (2)(f) limits defendant's access to items that the trial court, after an in camera review, determines necessary for the resolution of an issue. Therefore, defendant cannot expect automatic disclosure of records within the possession and control of prosecuting attorney. Instead, defendant must request an in camera review, identify the information sought, and explain why disclosure is necessary for resolution of an issue. To achieve the broadest possible disclosure, defendant should explain the relevance and materiality of the information sought. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Prosecutor has full access to records while investigating a report of known or suspected incident of child abuse or neglect. Subsection (2)(f) does not suspend prosecutor's obligation to disclose information that is materially favorable to defendant. However, that duty to disclose is still subject to the in camera review process in subsection (2)(f). Therefore, if the prosecutor believes a social services record contains information it must disclose, the prosecutor must ask the trial court to conduct an in camera review of the information to determine if disclosure is necessary for the resolution of an issue. If the trial court determines the information is necessary then it is disclosed to the defendant. The prosecutor does not have the right to offer the material into evidence without first obtaining the trial court's approval. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Subsection (2)(f) places the trial court in the middle of a procedural issue that normally would have been handled by counsel through the automatic disclosure requirements of Crim. P. 16(I)(a)(1). The trial court must review the records to determine whether the records are necessary for the resolution of an issue. Although the determination of whether the records should be disclosed must be made on case-specific circumstances, there are three principles that apply generally. First, under due process considerations, the trial court must disclose any information that is materially favorable to defendant because it is either exculpatory or impeaching. Second, the trial court should disclose inculpatory information when the information would materially assist in preparing the defense. Finally, it may be significant, although not determinative, that the information would be otherwise subject to automatic disclosure under Crim. P. 16(I)(a)(1). People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Defendant received adequate discovery of department of social services records. Subsection (2)(f) prohibits defendant from having the same direct access the prosecution has to the records. Moreover, trial court does not have an obligation through the in camera review to provide defendant all of the records, only those that are necessary for determination of an issue. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Trial court erred in not disclosing report from department of social services file, but error was not prejudicial. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Identification of informant released only upon court's finding of necessity. In an action for slander, outrageous conduct, negligence, gross negligence arising out of a child abuse investigation, access to data that would identify the informant shall be given to the plaintiffs only upon a finding by the trial court that public disclosure of the information may be necessary for the resolution of an issue in the case then pending before it. Martin v. County of Weld, 43 Colo. App. 49, 598 P.2d 532 (1979).

Court should make in camera inspection of records to determine if public disclosure is necessary in the interest of a fair trial. People v. Ross, 745 P.2d 277 (Colo. App. 1987).

Party seeking access to child abuse reports has the burden of establishing the existence of an exception to the statute's rule of confidentiality. People v. Dist. Court, 743 P.2d 432 (Colo. 1987).

Trial court need not review department of social services child abuse reports to determine whether confidentiality of reports should be waived when defendant did not meet his initial burden of showing applicability of the exception even though he did allege the reports

were crucial to his case. People v. Exline, 775 P.2d 48 (Colo. App. 1988).

Trial court did not abuse its discretion in finding that nondisclosed documents were not relevant to any issue before the court. Further, defendant's appellate counsel had no right to review sealed records for purposes of his appeal. Neither appellate defense counsel nor the attorney general's office was allowed access to the records, and allowing appellate defense counsel to review the entire social services file would unnecessarily sacrifice the state's interest in protecting the confidentiality of social services records. People v. Frost, 5 P.3d 317 (Colo. App. 1999).

Juvenile court abused its discretion when it chose to review only the last of nine volumes of department of human services' records. First, after the court necessarily determined that defendant had made a sufficient showing to warrant in camera review of those records, it was obligated to review all of the records, despite the fact that such review would have imposed a significant burden on the court. Second, because subsection (2)(f) authorizes only the juvenile court to review the department of human services' records in a case such as this, only the court could determine whether any of the records might be necessary to the determination of an issue before it. People ex rel. A.D.T., 232 P.3d 313 (Colo. App. 2010).

Juvenile court erred in refusing to order disclosure of certain department of human services' records that were exculpatory or impeaching or that would materially assist in preparing a defense. People ex rel. A.D.T., 232 P.3d 313 (Colo. App. 2010).

19-1-308. Parentage information. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under article 4 of this title shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. In addition to access otherwise provided for pursuant to section 19-1-303, all papers and records pertaining to the action or proceeding which are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys of record, and such parties and their attorneys shall be subject to a court order which shall be in effect against all parties to the action prohibiting such parties from disclosing the genetic testing information contained in the court's record. Such court papers and records shall not be subject to inspection by any person not a party to the action except the state child support enforcement agency or delegate child support enforcement units for the purposes set forth in section 19-1-303 (4.4) or upon consent of the court and all parties to the action, or, in exceptional cases only, upon an order of the court for good cause shown. All papers and records in the custody of the county department of social services shall be available for inspection by the parties to the action only upon the consent of all parties to the action and as provided by section 26-1-114, C.R.S., or by the rules governing discovery, but such papers and records shall not be subject to inspection by any person not a party to the action except upon consent of all parties to the action; except that the results of genetic testing may be provided to all parties, when available, notwithstanding laws governing confidentiality and without the necessity of formal discovery. Any person receiving or inspecting paternity information in the custody of the county department of social services shall be subject to a court order which shall be in effect prohibiting such persons from disclosing the genetic testing information contained in the department's record.

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 2003:** Entire section amended, p. 1267, § 57, effective July 1.

Editor's note: This section was formerly numbered as 19-1-121.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section is intended to protect confidentiality of adoption proceedings against disclosure to third parties and not to protect confidentiality among siblings or parents and, therefore, separate petitions to adopt all four children of deceased natural mother are not required. Hopp v. Patterman, 757 P.2d 164 (Colo. App. 1988).

19-1-309. Relinquishments and adoption information. Except as provided in parts 3 and 4 of article 5 of this title and section 19-1-303, all records and proceedings in relinquishment or adoption shall be confidential and open to inspection upon order of the court for good cause shown or as otherwise authorized pursuant to article 5 of this title. The court shall act to preserve the anonymity of the biological parents, the adoptive parents, and the child from the general public, except as ordered by the court for good cause shown pursuant to this section or except as authorized pursuant to a designated adoption or pursuant to section 19-5-104 (2) or part 3 or 4 of article 5 of this title. A separate docket shall be maintained for relinquishment proceedings and for adoption proceedings.

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 98:** Entire section amended, p. 822, § 26, effective August 5. **L. 99:** Entire section amended, p. 1130, § 2, effective July 1.

Editor's note: This section was formerly numbered as 19-1-122.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section applies to adult adoption proceedings under § 14-1-101. In re W.D.A. v. City & County of Denver, 632 P.2d 582 (Colo. 1981).

Section is intended to protect confidentiality of adoption proceedings against disclosure to third parties and not to protect confidentiality among siblings or parents and, therefore, separate petitions to adopt all four children of deceased natural mother are not required. Hopp v. Patterman, 757 P.2d 164 (Colo. App. 1988).

19-1-309.3. Exchange of information for child support purposes - process. The state court administrator of the judicial department and the executive director of the state department of human services, or their designees, shall design a process for exchanging information related to dependency or neglect actions, parentage actions, and any other actions brought pursuant to this title, as contemplated in sections 19-1-303 (4.4), 19-1-308, and 19-1-309, for purposes of locating responsible parties to pay child support, establishing paternity and child support, including child support debt pursuant to section 14-14-104, C.R.S., enforcing child support orders, disbursing collected child support payments, and facilitating the efficient and effective delivery of services under articles 13 and 13.5 of title 26, C.R.S. The process shall allow for the exchange of information by the state child support enforcement agency or the delegate child support enforcement units prior to or after intervention by the agency or units in an action brought pursuant to this title. Except for the limited purposes of the duties described in this section, the state child support enforcement agency or a delegate child support enforcement unit shall maintain the confidentiality of the information received pursuant to this part 3 and such information shall not be subject to discovery.

Source: L. 2003: Entire section added, p. 1268, § 58, effective July 1.

19-1-309.5. Adoptive family resource registry. Limitations concerning the accessibility to information on the adoptive family resource registry are set forth in section 19-5-207.5 (5) (c).

Source: L. 99: Entire section added, p. 1025, § 7, effective May 29.

19-1-310. Information related to intervention and prevention programs - review and evaluation of programs. (Repealed)

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 2000:** Entire section repealed, p. 585, § 12, effective May 18.

19-1-311. Centralized integrated data base system for children and families - strategic business plan - technology plan - children's information management committee - report. (Repealed)

Source: L. 96: Entire part added with relocations, p. 1170, § 6, effective January 1, 1997. **L. 2002:** Entire section repealed, p. 1017, § 23, effective June 1.

19-1-312. Central registry phase out - implementation plan - repeal. (Repealed)

Source: L. 97: Entire section added, p. 45, § 1, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2000. (See L. 97, p. 45.)

PART 4

PREVENTION PROGRAMS FUNDED
THROUGH STATE AGENCIES

19-1-401 to 19-1-403. (Repealed)

Source: L. 2000: Entire part repealed, p. 585, § 9, effective May 18.

Editor's note: This part 4 was added in 1999 and was not amended prior to its repeal in 2000. For the text of this part 4 prior to 2000, consult the 1999 Colorado Revised Statutes.

ARTICLE 1.5

Task Force Study to Recodify Code

19-1.5-101 to 19-1.5-106. (Repealed)

Editor's note: (1) This article was added in 1994 and was not amended prior to its repeal in 1997. For the text of this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 19-1.5-106 provided for the repeal of this article, effective July 1, 1997. (See L. 94, p. 1479.)

ARTICLE 2

The Colorado Juvenile Justice System

Editor's note: This title was repealed and reenacted in 1987, and this article was subsequently amended with relocations in 1996, effective January 1, 1997, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers prior to 1997 are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article for 1997, see the comparative tables located in the back of the index.

Law reviews: For article, "What Do 'They' Think? The Delinquency Court Process in Colorado as Viewed By the Youth", see 69 Den. U. L. Rev. 345 (1992); for article, "Highlights of Colorado's New Juvenile Justice Provisions", see 26 Colo. Law. 63 (January 1997); for article, "The Nuts and Bolts of Juvenile Delinquency", see 31 Colo. Law. 19 (October 2002); for article, "Colorado Juvenile Court History: The First Hundred Years", see 32 Colo. Law. 63 (April 2003); for comment, "Arrested Development: An Alternative to Juveniles Serving Life Without Parole in Colorado", see 78 U. Colo. Rev. 1059 (2007).

PART 1

GENERAL PROVISIONS

19-2-101. Short title.
19-2-102. Legislative declaration.
19-2-103. Definitions.
19-2-104. Jurisdiction.
19-2-105. Venue.
19-2-106. Representation of petitioner.
19-2-107. Right to jury trial.
19-2-108. Speedy trial - procedural schedule.
19-2-109. General procedure for juvenile hearings.
19-2-110. Open hearings.
19-2-111. Effect of proceedings.
19-2-112. Victim's right to attend dispositional, review, and restitution proceedings.
19-2-113. Parental accountability.
19-2-114. Cost of care.

PART 2

ADMINISTRATIVE ENTITIES - AGENTS

19-2-201. Short title.
19-2-202. Responsible agencies.
19-2-203. Division of youth corrections - created - interagency agreements.
19-2-204. Juvenile probation departments or divisions - service agreements.
19-2-205. Facility directors - duties.
19-2-206. Juvenile parole board - creation - membership.
19-2-207. Juvenile parole board - authority.
19-2-208. Administrative law judges.
19-2-209. Juvenile parole - organization.
19-2-210. Juvenile community review board.
19-2-211. Local juvenile services planning committee - creation - duties.
19-2-212. Working group for criteria for placement of juvenile offenders - establishment of formula - review of criteria.
19-2-213. Restorative justice coordinating council - establishment - membership - repeal.
19-2-214. Detention center sexual assault prevention program.

PART 3

JUVENILE ADMINISTRATIVE PROGRAMS - SERVICES

19-2-301. Short title.
19-2-302. Preadjudication service program created - community advisory board established - duties of board.
19-2-303. Juvenile diversion program - authorized.
19-2-303.5. Juvenile diversion cash fund - creation.
19-2-304. Parental responsibility training programs - criteria.
19-2-305. Intensive family preservation program - adjudicated juveniles - legislative declaration - financing for program - cash fund created - report - repeal. (Repealed)
19-2-306. Juvenile intensive supervision program - creation - judicial department.
19-2-307. Juvenile intensive supervision program - elements.
19-2-308. Community service and work programs.
19-2-309. Regimented juvenile training program - legislative declaration - repeal. (Repealed)
19-2-309.5. Community accountability program - legislative declaration - creation.
19-2-310. Appropriations to department of human services for services to juveniles.
19-2-311. Victim-offender conferences - pilot program.

PART 4

JUVENILE FACILITIES

19-2-401. Short title.
19-2-402. Juvenile detention services and facilities to be provided by department of human services - education.
19-2-402.5. Juvenile detention facilities - catchment areas.
19-2-403. Human services facilities - authority.
19-2-403.3. Juvenile facility employees.
19-2-403.5. Legislative declaration - eminent domain - detention facility site.
19-2-404. Facilities - control and restraint - liability - duty to pursue runaways.
19-2-405. Receiving centers - designation.
19-2-406. Lookout Mountain school.
19-2-407. Mount View school.
19-2-408. Youth camps.
19-2-409. Alternate placement.
19-2-410. Contracts and agreements with public and private agencies.

19-2-411. Facilities for juvenile offenders.
19-2-411.5. Juvenile facility - contract for operation.
19-2-412. Transfer of detention facilities and equipment.
19-2-413. Facility publications.
19-2-414. Facility rules - academic and vocational courses.
19-2-415. Fees for transporting juveniles.
19-2-416. Administration or monitoring of medications to persons in juvenile institutional facilities.
19-2-417. Juvenile detention facilities - mental illness screening.
19-2-418. Juveniles - medical benefits application assistance - county of residence - rules.

PART 5

ENTRY INTO SYSTEM

19-2-501. Short title.
19-2-502. Taking juvenile into custody.
19-2-503. Issuance of a lawful warrant taking a juvenile into custody.
19-2-503.5. Fingerprinting - juvenile under arrest - ordered by court.
19-2-504. Search warrants - issuance - grounds.
19-2-505. Search warrants - application.
19-2-506. Consent to search.
19-2-507. Duty of officer - screening teams - notification - release or detention.
19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions.
19-2-509. Bail.
19-2-510. Preliminary investigation.
19-2-511. Statements.
19-2-512. Petition initiation.
19-2-513. Petition form and content.
19-2-514. Summons - issuance - contents - service.
19-2-515. Contempt - warrant.
19-2-516. Petitions - special offenders.
19-2-517. Direct filing.
19-2-518. Transfers.

PART 6

SPECIAL PROCEEDINGS

19-2-601. Aggravated juvenile offender.

PART 7

PREADJUDICATION

19-2-701. Short title.
19-2-702. Mentally ill juvenile or juvenile with developmental disabilities - procedure. (Repealed)
19-2-703. Informal adjustment.
19-2-704. Diversion.
19-2-705. Preliminary hearing - dispositional hearing.
19-2-706. Advisement.
19-2-707. Mandatory protection order.
19-2-708. Entry of plea.
19-2-709. Deferral of adjudication.
19-2-709.5. Implementation committees - repeal. (Repealed)
19-2-710. Mental health services for juvenile - how and when issue raised - procedure - definitions.

PART 8

ADJUDICATORY PROCEDURES

19-2-801. Short title.
19-2-802. Evidentiary considerations.
19-2-803. Legislative declaration - admissibility of evidence.
19-2-804. Procedures at trial.
19-2-805. Method of jury selection.

PART 9

POSTADJUDICATORY PROCESS

19-2-901. Short title.
19-2-902. Motion for new trial.
19-2-903. Appeals.
19-2-904. Posttrial bail.
19-2-905. Presentence investigation.
19-2-906. Sentencing hearing.
19-2-906.5. Orders - community placement - reasonable efforts required - reviews.
19-2-907. Sentencing schedule - options.
19-2-908. Sentencing - special offenders.
19-2-909. Sentencing - commitment to the department of human services.
19-2-910. Sentencing - persons eighteen years of age or older - county jail - community corrections.
19-2-911. Sentencing - alternative services - detention.
19-2-912. Sentencing - placement with relative.
19-2-913. Sentencing - probation - supervised work program.
19-2-914. Sentencing - community accountability program.
19-2-915. Sentencing - legal custody - social services.
19-2-916. Sentencing - placement based on special needs of the juvenile.
19-2-917. Sentencing - fines.

19-2-918. Sentencing - restitution by juvenile.
19-2-918.5. Sentencing - animal cruelty - anger management treatment.
19-2-919. Sentencing - requirements imposed on parents.
19-2-920. Out-of-home placement - runaways - duty to notify.
19-2-921. Commitment to department of human services.
19-2-922. Juveniles committed to department of human services - evaluation and placement.
19-2-923. Juveniles committed to department of human services - transfers.
19-2-924. Juveniles committed to department of human services - emergency release.
19-2-924.5. Juveniles committed to department of human services - genetic testing - repeal. (Repealed)
19-2-924.7. Juveniles committed to the department of human services - prohibition against the use of restraints on pregnant juveniles.
19-2-925. Probation - terms - release - revocation.
19-2-925.5. Genetic testing - repeal. (Repealed)
19-2-925.6. Genetic testing of adjudicated offenders - definitions.
19-2-926. Juvenile probation officers - powers and duties.

PART 10

POSTSENTENCE

19-2-1001. Short title.
19-2-1002. Juvenile parole.
19-2-1003. Parole officers - powers - duties.
19-2-1004. Parole violation and revocation.

PART 11

TEEN COURTS

19-2-1101. Short title.
19-2-1102. Definitions.
19-2-1103. Teen court program - supervising courts.
19-2-1104. Procedures - hearings.
19-2-1105. Alternative procedures.

PART 12

DETENTION BED MANAGEMENT

19-2-1201. Juvenile detention bed cap.
19-2-1202. Working group - allocation of beds.
19-2-1203. Judicial districts - plans for the cap.
19-2-1204. Use of juvenile detention beds.

PART 13

COMPETENCY TO PROCEED

19-2-1301. Mental incompetency to proceed - effect - how and when raised.
19-2-1302. Determination of incompetency to proceed.
19-2-1303. Procedure after determination of competency or incompetency.
19-2-1304. Restoration of competency.
19-2-1305. Procedure after hearing concerning restoration to competency.

PART 1

GENERAL PROVISIONS

19-2-101. Short title. This part 1 shall be known and may be cited as "General Provisions".

Source: L. 96: Entire article amended with relocations, p. 1595, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-101 was relocated to section 19-2-103.

19-2-102. Legislative declaration. (1) The general assembly hereby finds that the intent of this article is to protect, restore, and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and, in certain cases, will also provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes. The general assembly further

finds that, while holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.

(2) The general assembly hereby finds that the public has the right to safe and secure homes and communities and that when a delinquent act occurs such safety and security is compromised; and the result is harm to the victim, the community, and the juvenile offender. The general assembly finds that the juvenile justice system should seek to repair such harm and that victims and communities should be provided with the opportunity to elect to participate actively in a restorative process that would hold the juvenile offender accountable for his or her offense.

Source: L. 96: Entire article amended with relocations, p. 1595, § 1, effective January 1, 1997. **L. 99:** Entire section amended, p. 68, § 1, effective August 4.

Editor's note: The former section 19-2-102 was relocated to section 19-2-104.

ANNOTATION

Law reviews. For note, "In re Gault and the Colorado Children's Code", see 44 Den. L. J. 644 (1967).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Design of the Colorado Children's Code. The code was designed to benefit youthful offenders. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Construction of the Colorado Children's Code. The code should not be construed to diminish the rights of youthful offenders. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Procedural safeguards to curb administrative abuse. Procedural safeguards in article 2 were established to curb possible abuse inherent in informal administrative practices in an area involving both the parents' and the child's rights. P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974).

The Colorado Children's Code requires balancing. Because the code is for the benefit and best interests of all Colorado's children, a balancing effect must take place. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

There is a very fundamental difference between a criminal proceeding and a delinquency proceeding, and the clear legislative intent is that the handling of juvenile delinquents should be oriented towards rehabilitation and reformation, and not punishment as such, even though the actions of the child if committed by an adult would justify a criminal proceeding. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

But juvenile cases must accord due process. There is no constitutional requirement that proceedings in juvenile cases shall be conducted according to the criminal law, or that proceedings need take any particular form, so long as the essentials of due process and fair treatment are accorded. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

19-2-103. Definitions. For purposes of this article:

(1) "Adjudication" is defined in section 19-1-103 (2).
(2) "Basic identification information" is defined in section 19-1-103 (12).
(3) "Commit" is defined in section 19-1-103 (24).
(4) "Cost of care" is defined in section 19-1-103 (30).
(5) "Delinquent act" is defined in section 19-1-103 (36).
(6) "Diagnostic and evaluation center" is defined in section 19-1-103 (41).
(7) "Estate" is defined in section 19-1-103 (47).
(8) "Gang" is defined in section 19-1-103 (52).
(9) "Halfway house" is defined in section 19-1-103 (62).
(10) "Juvenile" is defined in section 19-1-103 (68).
(11) "Juvenile community review board" is defined in section 19-1-103 (69).
(12) "Juvenile delinquent" is defined in section 19-1-103 (71).
(13) "Receiving center" is defined in section 19-1-103 (90).
(14) "Residential community placement" is defined in section 19-1-103 (92).
(15) "Screening team" is defined in section 19-1-103 (94.5).

(16) "Sentencing hearing" is defined in section 19-1-103 (95).

(17) "Staff secure facility" is defined in section 19-1-103 (101.5).

(18) "Training school" is defined in section 19-1-103 (109).

Source: L. 96: Entire article amended with relocations, p. 1596, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-103, as it existed prior to 1996, was relocated to section 19-2-105.

19-2-104. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court shall have exclusive original jurisdiction in proceedings:

(a) Concerning any juvenile ten years of age or older who has violated:

(I) Any federal or state law, except nonfelony state traffic, game and fish, and parks and recreation laws or rules, the offenses specified in section 18-13-121, C.R.S., concerning tobacco products, the offense specified in section 18-13-122, C.R.S., concerning the illegal possession or consumption of ethyl alcohol by an underage person, and the offenses specified in section 18-18-406 (1) and (3), C.R.S., concerning marijuana and marijuana concentrate;

(II) Any county or municipal ordinance except traffic ordinances, the penalty for which may be a jail sentence of more than ten days; or

(III) Any lawful order of the court made under this title;

(b) Concerning any juvenile to which section 19-2-518 applies; except that, after filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to section 19-2-517. Upon said filing or indictment in the district court, the juvenile court shall no longer have jurisdiction over proceedings concerning said charges.

(2) The juvenile court shall have limited jurisdiction in matters to which section 19-2-517 applies.

(3) The fact that a juvenile has been prosecuted or convicted in the county court for a nonfelony violation under title 42, C.R.S., shall not be a bar to a subsequent or parallel proceeding under this title for delinquent acts arising out of the same criminal episode; nor shall proceedings under this title be a bar to a subsequent or parallel prosecution in the county court for a nonfelony violation under title 42, C.R.S., for the same delinquent acts arising from the same criminal episode.

(4) Notwithstanding any other provision of this section to the contrary, the juvenile court may exercise jurisdiction over a juvenile who is under sixteen years of age and who has violated a traffic law or ordinance if his or her case is transferred to the juvenile court from the county court. Such a transfer shall be subject to approval by the juvenile court.

(5) Notwithstanding any other provision of this section to the contrary, the juvenile court and the county court shall have concurrent jurisdiction over a juvenile who is under eighteen years of age and who is charged with a violation of section 18-13-122, 18-18-406 (1) or (3), 18-18-428, 18-18-429, 18-18-430, or 42-4-1301, C.R.S.; except that, if the juvenile court accepts jurisdiction over such a juvenile, the county court jurisdiction shall terminate.

(6) The juvenile court may retain jurisdiction over a juvenile until all orders have been fully complied with by such person, or any pending cases have been completed, or the statute of limitations applicable to any offense that may be charged has run, regardless of whether such person has attained the age of eighteen years, and regardless of the age of such person.

(7) This section shall not be construed to confer any jurisdiction upon the court over a person for any offense committed after the person attains the age of eighteen years.

Source: L. 96: Entire article amended with relocations, p. 1596, § 1, effective January 1, 1997. **L. 99:** (5) amended, p. 1375, § 12, effective July 1. **L. 2004:** (5) amended, p. 1131, § 3, effective July 1. **L. 2010:** (1)(a)(I) amended, (HB 10-1352), ch. 259, p. 1175, § 22, effective August 11.

Editor's note: (1) This section was formerly numbered as 19-2-102. Prior to relocation in 1996, the said section 19-2-102 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-104 and 19-3-118 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-104 was relocated to section 19-2-106 when this article was amended with relocations in 1996.

ANNOTATION

Law reviews. For article, "Prosecution of Juveniles in Colorado Municipal Courts", see 21 Colo. Law. 1151 (1992).

Age at which acts are committed is determinative factor as to the applicability of the Colorado Children's Code. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

Juvenile court may retain jurisdiction over juvenile who was adjudicated delinquent until any restitution order is fully complied with, even though it may subject him to the court's jurisdiction indefinitely into his adult years. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

This section is inapplicable where there has been no adjudication concerning the petitioner in the juvenile court. Jaramillo v. Dist. Court, 173 Colo. 459, 480 P.2d 841 (1971).

No new trial where court terminates jurisdiction. A new trial cannot be held upon reversal where the trial court, at a hearing subsequent to its order adjudging respondent a delinquent child, terminated its jurisdiction pursuant to this section. People in Interest of J.S.C. v. J.S.C., 30 Colo. App. 381, 493 P.2d 671 (1972).

Since a person under age 18 can only be charged with an offense in the manner permitted by the Colorado Children's Code, the county court had no jurisdiction to entertain or to dispose of the merits of the proceeding involving an offense alleged against a juvenile and was without authority to go further than merely dismissing the case without prejudice for lack of jurisdiction. People in Interest of C.O., 870 P.2d 1266 (Colo. App. 1994).

Prosecution of juveniles under municipal ordinance does not conflict with Colorado Children's Code and, although municipalities are not prohibited from adopting same procedures as the Children's Code, municipalities are not required to follow such procedures. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Colorado Children's Code does not require that juvenile proceedings in municipal courts be civil in nature as Children's Code and ordinances of municipality on juvenile proceedings do not conflict. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Intent of general assembly that Colorado Children's Code apply only to juvenile proceedings in juvenile court, and not to municipal court proceedings involving prosecution of juveniles under municipal ordinances. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Juvenile court to take judicial notice of municipal ordinances. A court of the juvenile division of the district court should take judicial notice of those municipal ordinances within the contemplation of the juvenile code, when the municipalities are within the judicial district where the juvenile court sits. People v. Hight, 198 Colo. 299, 599 P.2d 885 (1979).

Juveniles to receive same trial rights as adults. The juvenile court's assumption of jurisdiction carries with it the same trial duties as to juveniles who have violated municipal ordinances, as a municipal court has to adults who violated the same ordinances. People v. Hight, 198 Colo. 299, 599 P.2d 885 (1979).

Delinquency proceeding and child in need of supervision proceeding compared. In delinquency proceedings, the child stands charged with activity which would constitute a crime if done by an adult. In contrast, a child in need of supervision proceeding determines whether the child is a truant, a runaway, or a danger to himself or others. People in Interest of Y.D.M., 197 Colo. 403, 593 P.2d 1356 (1979).

Juvenile court lacks exclusive jurisdiction. Where the violation charged is of a municipal ordinance that does not carry a jail sentence, the general assembly has not intended by the Colorado Children's Code to give sole and exclusive jurisdiction to the juvenile court. Wigent v. Shinsato, 43 Colo. App. 83, 601 P.2d 653 (1979).

Application of former subsection (9)(c) (now subsection (4)). Although subsection (9)(c) (now subsection (4)) gives the juvenile court jurisdiction over a traffic offender under 16 years of age whose case has been transferred from county court, this provision obviously does not apply to a 16 year old who holds a valid

Colorado driver's license. People v. Maynes, 39 Colo. 153, 562 P.2d 756 (1977).

The intent of the Colorado Children's Code is to restrict the institution of felony charges in a criminal proceeding against one under 18 years of age. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970); D.W. v. Dist. Court, 193 Colo. 194, 564 P.2d 949 (1976).

The juvenile court has exclusive original jurisdiction of proceedings concerning any delinquent child, which proceeding is to be distinguished from a true criminal proceeding. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967); I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

It has jurisdiction over a petition in delinquency alleging vehicular homicide, which is not excluded by the Colorado Children's Code as a "traffic offense". I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

But not over child leaving home to be married. The mere fact that a minor child left the home of her mother and was taken by respondent to a neighboring state and was married does not show her to be a delinquent under the statute, such as to give the court jurisdiction. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

The district court still retains original jurisdiction in all criminal cases. This is so because a delinquency proceeding is not a criminal case. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

The district attorney may not directly file charges in district court where the identical charges were initially filed in juvenile court and a transfer hearing is pending. J.D.C. v. Dist. Court 18th Jud. Dist., 910 P.2d 684 (Colo. 1996) (decided prior to amendment of subsection (1)(b) specifically authorizing direct filing under such circumstances).

Exception to juvenile court's exclusive jurisdiction in cases where prosecution directly files charges. Under the plain language of subsection (1)(b) of this section and §§ 19-2-517 (2) and 19-2-518 (2), a prosecutor has discretion to proceed charging alleged juvenile offenders who are eligible to be charged as adults by means of a direct filing in district court until such time as the juvenile court actually conducts a transfer hearing. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Because the conducting of a transfer hearing is the only event that vests the juvenile court with exclusive jurisdiction and the juvenile court had not conducted a transfer hearing before the prosecution directly filed the information, the district court had jurisdiction. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Jurisdiction not affected by removing case from docket. A trial court order removing a parental rights termination case from the docket of cases maintained by the court did not affect the court's continuing statutory jurisdiction over the child involved. People in Interest of T.A.F. v. B.F., 624 P.2d 349 (Colo. App. 1980), cert. denied, 454 U.S. 825, 102 S. Ct. 115, 70 L. Ed. 2d 99 (1981).

This section allows the juvenile court's jurisdiction to continue until the juvenile completes any sentence imposed, regardless of whether the juvenile reaches 18 years of age prior to completion of the sentence. Thus, where the 18-year-old defendant escaped while serving a juvenile sentence, he remained under the continuing jurisdiction of the juvenile court and was a "juvenile" for purposes of § 18-8-210.1, the juvenile custody and confinement statute, and subject to the provisions of § 18-8-208, the felony escape statute. People v. Young, 908 P.2d 1147 (Colo. App. 1995).

Applied in People in Interest of Maddox v. Dist. Court, 198 Colo. 208, 597 P.2d 573 (1979).

19-2-105. Venue. (1) (a) Proceedings in cases brought under this article shall be commenced in the county in which the alleged violation of the law, ordinance, or court order took place; except that the court may order a change of venue based upon written findings that a change of venue is necessary to ensure that the juvenile receives a fair trial, in which case venue shall be transferred to an appropriate jurisdiction prior to the findings of fact. When the court in which the petition was filed is in a county other than where the juvenile resides, such court may transfer venue to the court of the county of the juvenile's residence for the purposes of supervision after sentencing and entry of any order for payment of restitution. A transfer of venue may not be rejected for any reason except where venue would be improper.

(b) For purposes of determining proper venue, a juvenile who is placed in the legal custody of a county department of social services shall be deemed for the entire period of placement to reside in the county in which the juvenile's legal custodian is located, even if the juvenile is physically residing in a residential facility located in another county. If a juvenile is placed in the legal custody of a county department of social services, the court shall not transfer venue during the period of placement to any county other than the county in which the juvenile's legal custodian is located.

(2) In determining proper venue, the provisions of section 18-1-202, C.R.S., shall apply.

(3) A court transferring venue under this section shall transmit all documents and legal social records, or certified copies thereof, to the receiving court, which court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in such court.

(4) Upon transfer of venue, the receiving court shall set a date not more than thirty days following the date upon which the change of venue is ordered for the juvenile and his or her parent or guardian to appear.

Source: L. 96: Entire article amended with relocations, p. 1598, § 1, effective January 1, 1997. **L. 99:** (1) amended, p. 1373, § 7, effective July 1.

Editor's note: This section was formerly numbered as 19-2-103. Prior to relocation in 1996, the said section 19-2-103 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

No authority for transfer to certain counties. There is no statutory authority for transfer of a juvenile case to a county which is neither the county where the offense occurred nor the county of the accused juvenile's residence. People v. Dist. Court, 191 Colo. 28, 549 P.2d 1317 (1976).

Motion for change of venue untimely in delinquency hearing where merits already adjudicated. A change of venue is properly a pretrial motion to have the merits of the action adjudicated in the correct forum and county. Accordingly, such a motion is untimely in a juvenile delinquency hearing if the merits have already been adjudicated in their entirety, which occurs with the determination that the allegations in the original petition are true and the finding that the child is a juvenile delinquent. People in Interest of Maddox v. Dist. Court, 198 Colo. 208, 597 P.2d 573 (1979).

19-2-106. Representation of petitioner. In all matters under this article, the petitioner shall be represented by the district attorney.

Source: L. 96: Entire article amended with relocations, p. 1598, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-104. Prior to relocation in 1996, the said section 19-2-104 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Any person proceeded against in court is entitled to counsel of his or her own choosing, and the selection of such counsel cannot be dictated by those who instigate the action. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

In a proceeding following a complaint filed by parents of an allegedly delinquent minor 17 years of age, who had selected her own counsel to represent her, an order of the trial court incorporating the parents' request that such counsel be prohibited from appearing or representing such minor was in excess of its jurisdiction. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

19-2-107. Right to jury trial. (1) In any action in delinquency in which a juvenile is alleged to be an aggravated juvenile offender, as described in section 19-2-516, or is alleged to have committed an act that would constitute a crime of violence, as defined in section

18-1.3-406, C.R.S., if committed by an adult, the juvenile or the district attorney may demand a trial by a jury of not more than six persons except as provided in section 19-2-601 (3) (a), or the court, on its own motion, may order such a jury to try any case brought under this title, except as provided in subsection (2) of this section.

(2) The juvenile is not entitled to a trial by jury when the petition alleges a delinquent act which is a misdemeanor, a petty offense, a violation of a municipal or county ordinance, or a violation of a court order.

(3) Unless a jury is demanded pursuant to subsection (1) of this section, it shall be deemed waived.

(4) Notwithstanding any other provisions of this article, in any action in delinquency in which a juvenile requests a jury pursuant to this section, the juvenile shall be deemed to have waived the sixty-day requirement for holding the adjudicatory trial established in section 19-2-708. In such a case, the juvenile's right to a speedy trial shall be governed by section 18-1-405, C.R.S., and rule 48 (b) of the Colorado rules of criminal procedure.

Source: L. 96: Entire article amended with relocations, p. 1598, § 1, effective January 1, 1997. **L. 2002:** (1) amended, p. 1523, § 225, effective October 1.

Editor's note: This section was formerly numbered as 19-2-501. Prior to relocation in 1996, the said section 19-2-501 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Error for trial judge to refuse a jury trial and fail to notify defendants or parents or friends present, that a trial by jury might be had if they wished it. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Juvenile who claimed that the incorrect statute was applied during his trial waived his statutory right to a jury trial because he was given the opportunity at pretrial hearing to make his position known regarding the applicable statutory provisions, and did not do so. People v. J.J.H., 992 P.2d 626 (Colo. App. 1999), rev'd on other grounds, 17 P.3d 159 (Colo. 2001).

Trial court did not err in denying the request for a jury trial. Since defendant's charge of sexual assault on a child did not include charges of bodily injury, intimidation, threats, or force, defendant was not charged with a crime of violence as defined in § 18-1.3-406 and, subsequently, was not entitled to a jury trial. People ex rel. A.B.-B., 215 P.3d 1205 (Colo. App. 2009).

Jury trial is not constitutionally required under the due process clause or equal protection clause of the state constitution, article II, § 25, in the less serious delinquency adjudications specified in this statute. People in Interest of T.M., 742 P.2d 905 (Colo. 1987); People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1996).

Express constitutional right to a jury trial afforded to an adult facing a serious criminal charge not extended to a juvenile in delinquency proceedings under the federal or state constitution, even when the consequences for the juvenile include possible commitment over six months; rationale for not extending jury trial to juvenile proceedings focuses on the unique nature of juvenile proceedings and not on the potential consequences of a delinquency adjudication. People ex rel. A.C., 991 P.2d 304 (Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001).

Right to due process under the state constitution does not include a right to a jury in any delinquency proceeding. People ex rel. A.C., 991 P.2d 304 (Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001).

No equal protection right to a juvenile facing possible commitment over six months; there is no juvenile fundamental right to a jury trial in delinquency proceedings and it is not irrational to preclude jury trials in juvenile proceedings. People ex rel. A.C., 991 P.2d 304 (Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001).

Absent a corresponding constitutional right, juvenile who was not alleged to have committed an act that would constitute a crime of violence and who was not an aggravated juvenile offender did not have a statutory right to a jury trial. People ex rel. A.C., 991 P.2d 304

(Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001); People ex rel. J.T., 13 P.3d 321 (Colo. App. 2000).

Jury demand right extended to all parties of record to delinquency proceeding. The general assembly's selection of "any interested party" stands out as a purposeful choice to extend the right of jury demand to all parties of record to the delinquency proceeding. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981); People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1996).

And juvenile has no veto power over state's demand. There is no indication of an intent to bestow on the juvenile a veto power over the state's jury demand through a statutory right of jury waiver. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

19-2-108. Speedy trial - procedural schedule. (1) The juvenile's right to a speedy trial shall be governed by section 18-1-405, C.R.S., and rule 48(b) of the Colorado rules of criminal procedure.

(2) In bringing an adjudicatory action against a juvenile pursuant to this article, the district attorney and the court shall comply with the deadlines for:

(a) Holding the detention hearing, as specified in section 19-2-508 (3) (a) (I);

(b) Filing the petition, as specified in section 19-2-508 (3) (a) (V);

(c) Setting the first appearance, as specified in section 19-2-514 (4); and

(d) Holding the adjudicatory trial, as specified in section 19-2-708 (1).

(3) The court may grant a continuance with regard to any of the deadlines specified in subsection (2) of this section upon making a finding of good cause.

Source: L. 96: Entire article amended with relocations, p. 1599, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-502.

ANNOTATION

This section incorporates the speedy trial tolling and enforcement provisions of § 18-1-405, at least to the extent that those provisions are not inconsistent with the more specific 60-day and "good cause" continuance provisions of this section. People ex rel. J.M.N., 39 P.3d 1261 (Colo. App. 2001).

Since a juvenile's right to speedy trial is governed by § 18-1-405, the right is waived when the juvenile, through counsel, affirmatively accepts a trial date beyond the 60-day period provided in § 19-2-509 when the juvenile is detained without bail. People in Interest of G.W.R., 943 P.2d 466 (Colo. App. 1996).

19-2-109. General procedure for juvenile hearings. (1) The Colorado rules of juvenile procedure shall apply in all proceedings conducted under this article.

(2) Hearings shall be held before the court without a jury, except as provided in sections 19-2-107 and 19-2-601 (3), and may be conducted in an informal manner.

(3) A verbatim record shall be taken of all proceedings, including any hearing conducted by a magistrate.

(4) When more than one juvenile is named in a petition or individual petitions are filed against more than one juvenile alleging delinquent acts arising from the same delinquent episode, any proceedings, including trials, may be consolidated.

(5) Juvenile cases shall be heard separately from adult cases, and the juvenile or his or her parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

(6) The parent, guardian, or legal custodian of the juvenile is required to attend all proceedings, including all hearings, concerning the juvenile. Failure, without good cause, to attend a proceeding concerning the juvenile may subject the parent, guardian, or legal custodian to contempt sanctions; except that, if the juvenile's legal custodian is a county department of social services or the department of human services, the legal custodian need not attend any proceeding at which the juvenile's guardian ad litem is present.

Source: L. 96: Entire article amended with relocations, p. 1599, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-401. Prior to relocation in 1996, the said section 19-2-401 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Juvenile proceedings are governed by the procedural rules contained in the Colorado Children's Code. People ex rel. M.C.L., 671 P.2d 1339 (Colo. App. 1983).

Hearing may be informally conducted, and the court may take into consideration all factors which he normally takes into account when sentencing. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

And court is not bound by strict rules of evidence in a hearing to determine whether probation should be revoked. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Thus, there is a presumption that all incompetent or hearsay evidence is disregarded by a court in reaching its conclusions, so a judgment will not be reversed on appeal because of the admission of such evidence. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

However, the Colorado Children's Code does not dispense with rules of evidence which directly bear upon substantive proof although the code does permit hearings to be conducted in an informal manner. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

In delinquency cases a verbatim record of the proceedings and evidence shall be maintained unless expressly waived. John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965).

Lack of transcript and evidence required reversal. Where an order was entered declaring a child neglected and dependent, severing parental rights, and holding the child's grandfather in contempt of court for failure to deliver the child, but the court reporter certified that there had been no transcript made of any of the hearings prior to the one on the contempt violation, and since there was no evidence or showing that the home environment which the grandfather might provide for the child would be unsatisfactory the judgment and orders of the trial court were reversed. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

19-2-110. Open hearings. The general public shall not be excluded from hearings held under this article unless the court determines that it is in the best interest of the juvenile or of the community to exclude the general public, and, in such event, the court shall admit only such persons as have an interest in the case or work of the court, including persons whom the district attorney, the juvenile, or his or her parents or guardian wish to be present.

Source: L. 96: Entire article amended with relocations, p. 1600, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-904. Prior to relocation in 1996, the said section 19-2-904 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-111. Effect of proceedings. No adjudication or proceeding under this article shall impose any civil disability upon a juvenile or disqualify him or her from holding any position under the state personnel system or submitting any governmental or military service application or receiving any governmental or military service appointment or from holding public office.

Source: L. 96: Entire article amended with relocations, p. 1600, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-903. Prior to relocation in 1996, the said section 19-2-903 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-112. Victim's right to attend dispositional, review, and restitution proceedings. The victim of any delinquent act or a relative of the victim, if the victim has died, has the right to attend all dispositional, review, and restitution proceedings resulting from the adjudication of such act. The victim or his or her relative has the right to appear at the proceedings personally or with counsel and to adequately and reasonably express his or her views concerning the act, the juvenile, the need for restitution, and the type of dispositional orders that should be issued by the court. When issuing such orders, the court shall consider the statements made by the victim or his or her relative and shall make a finding, on the record, when appropriate, as to whether or not the juvenile would pose a threat to public safety if granted probation.

Source: L. 96: Entire article amended with relocations, p. 1600, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-707. Prior to relocation in 1996, the said section 19-2-707 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-121 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-113. Parental accountability. (1) (a) The parent, guardian, or legal custodian of any juvenile subject to proceedings under this article is required to attend all proceedings that may be brought under this article concerning the juvenile. The court may impose contempt sanctions against said parent, guardian, or legal custodian for failure, without good cause, to attend any proceeding concerning the juvenile; except that, if the juvenile's legal custodian is a county department of social services or the department of human services, the legal custodian need not attend any proceeding at which the juvenile's guardian ad litem is present.

(b) For any juvenile adjudicated pursuant to this article, the court may specify its expectations for the juvenile's parent, guardian, or legal custodian, so long as the parent, guardian, or legal custodian is a party to the delinquency proceedings.

(2) (a) The general assembly hereby determines that families play a significant role in the cause and cure of delinquent behavior of children. It is therefore the intent of the general assembly that parents cooperate and participate significantly in the assessment and treatment planning for their children.

(b) Any treatment plan developed pursuant to this article may include requirements to be imposed on the juvenile's parent, so long as the parent is a party to the delinquency proceedings. These requirements may include, but are not limited to, the following:

(I) Maximum parent involvement in the sentencing orders;

(II) Participation by the parent in parental responsibility training;

(III) Cooperation by the parent in treatment plans for the juvenile;

(IV) Performance of public service by the parent;

(V) Cost of care reimbursement by the parent;

(VI) Supervision of the juvenile; and

(VII) Any other provisions the court deems to be in the best interests of the juvenile, the parent's other children, or the community.

(c) Any parent who is a party to the delinquency proceedings and who fails to comply with any requirements imposed on the parent in a treatment plan may be subject to contempt sanctions.

(d) The court shall have discretion to exempt the parent from participation in the juvenile's treatment.

Source: L. 96: Entire article amended with relocations, p. 1600, § 1, effective January 1, 1997.

ANNOTATION

Although a parent may be held in contempt pursuant to this section, the court is not permitted to impose a suspended jail sentence against a parent to attempt to prevent a failure to comply with the court's order regarding the juvenile's treatment plan. People v. J.M., 22 P.3d 545 (Colo. App. 2000).

19-2-114. Cost of care. (1) (a) Notwithstanding the provisions of section 19-1-115 (4) (d), where a juvenile is sentenced to a placement out of the home or is granted probation as a result of an adjudication, deferral of adjudication, or direct filing in or transfer to district court, the court may order the juvenile or the juvenile's parent to make such payments toward the cost of care as are appropriate under the circumstances. In setting the amount of such payments, the court shall take into consideration and make allowances for any restitution ordered to the victim or victims of a crime, which shall take priority over any payments ordered pursuant to this section, and for the maintenance and support of the juvenile's spouse, dependent children, any other persons having a legal right to support and maintenance out of the estate of the juvenile, or any persons having a legal right to support and maintenance out of the estate of the juvenile's parent. The court shall also consider the financial needs of the juvenile for the six-month period immediately following the juvenile's release, for the purpose of allowing said juvenile to seek employment.

(b) For an adoptive family who receives an approved Title IV-E adoption assistance subsidy pursuant to the federal "Social Security Act", 42 U.S.C. sec. 673 et seq., or an approved payment in subsidization of adoption pursuant to section 26-7-103, C.R.S., the cost of care, as defined in section 19-1-103 (30), shall not exceed the amount of the adoption assistance payment.

(2) Any order for payment toward the cost of care entered by the court pursuant to subsection (1) of this section shall constitute a judgment which shall be enforceable by the state or the governmental agency that would otherwise incur the cost of care for the juvenile in the same manner as are civil judgments.

(3) In order to effectuate the provisions of this section, a juvenile and such juvenile's parent shall be required to provide information to the court regarding the juvenile's estate and the estate of such juvenile's parent. Such financial information shall be submitted in writing and under oath.

(4) and (5) Repealed.

Source: L. 96: Entire article amended with relocations, p. 1601, § 1, effective January 1, 1997. **L. 97:** (4) and (5) repealed, p. 1431, § 5, effective June 3. **L. 2007:** (1) amended, p. 1506, § 3, effective May 31.

Editor's note: This section was formerly numbered as 19-2-705.5 (1) to (5).

Cross references: For the legislative declaration contained in the 2007 act amending subsection (1), see section 1 of chapter 351, Session Laws of Colorado 2007.

ANNOTATION

Law reviews. For article, "Parental Financial Liability for Juvenile Delinquents", see 37 Colo. Law. 49 (November 2008).

This section, and § 19-1-115 (4) (d) can be harmonized and the court should consider both in allocating costs. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

This section gives the court flexibility in allocating the cost of a juvenile's care. If appropriate, the court may order that the juvenile, in addition to his or her parents, also make reasonable payments, after considering the factors enumerated in the statute and making allowances for any restitution ordered to the victim or victims of a crime. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

Subsection (3) expressly places the burden of providing financial information on the ju-

venile and his or her parents. Thus, the county department of human services was not required to present information regarding the juvenile's and his or her parents' estates to calculate the amount of payment under § 19-2-114. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

PART 2

ADMINISTRATIVE ENTITIES - AGENTS

19-2-201. Short title. This part 2 shall be known and may be cited as "Juvenile Administrative Entities and Agents".

Source: L. 96: Entire article amended with relocations, p. 1602, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-201 was relocated to section 19-2-502.

19-2-202. Responsible agencies. The department of human services is the single state agency responsible for the oversight of the administration of juvenile programs and the delivery of services for juveniles and their families in this state. In addition, the department of human services is responsible for juvenile parole. The state judicial department is responsible for the oversight of juvenile probation. The department of public safety is responsible for the oversight of community diversion programs. The state agencies described in this section shall jointly oversee the application by judicial districts of the placement criteria established by the working group as provided in section 19-2-212.

Source: L. 96: Entire article amended with relocations, p. 1602, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-202 was relocated to section 19-2-503.

19-2-203. Division of youth corrections - created - interagency agreements. (1) There is hereby created within the department of human services the division of youth corrections, the head of which shall be the director of the division of youth corrections. The director shall be appointed by the executive director of the department of human services pursuant to section 13 of article XII of the state constitution and the laws and rules governing the state personnel system. The director shall exercise powers and perform duties and functions within the office of the executive director of the department of human services in accordance with the provisions of this article and as if transferred thereto by a **type 2** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) (a) The division of youth corrections may enter into agreements with the judicial department to combine provision of juvenile parole and probation services. Juvenile probation and parole supervision programs implemented pursuant to such agreements shall not include provisions for supervision of juveniles sentenced to the department of corrections.

(b) Repealed.

Source: L. 96: Entire article amended with relocations, p. 1602, § 1, effective January 1, 1997. **L. 98:** (2)(b) repealed, p. 730, § 18, effective May 18.

Editor's note: The former section 19-2-203 was relocated to section 19-2-507.

19-2-204. Juvenile probation departments or divisions - service agreements. (1) The juvenile court is authorized to establish juvenile probation departments or divisions.

(2) Subject to the provisions of section 13-3-105, C.R.S., the juvenile court is authorized to appoint juvenile probation officers and such other professional and clerical personnel as may be required. Juvenile probation officers shall have the powers and duties specified in section 19-2-926 and shall have the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138, C.R.S.

(3) Upon the agreement of the juvenile court judges, the approval of the chief judge in each district or, for the second judicial district, the presiding judge of the Denver juvenile court, and the approval of the chief justice of the supreme court, two or more contiguous judicial districts may combine to form an interdistrict juvenile probation department.

(4) (a) The juvenile court judges are authorized to enter into agreements with the department of human services, county departments of social services, other public agencies, private agencies, or with other juvenile courts to provide supervision or other services for juveniles placed on probation by the court.

(b) The conditions and terms of any such agreement shall be set forth in writing, including any payments to be made by the court for the services provided.

(c) Any agreement made under this subsection (4) may be terminated upon ninety days' written notice by either party thereto.

Source: L. 96: Entire article amended with relocations, p. 1603, § 1, effective January 1, 1997. **L. 2003:** (4)(a) amended, p.1901, § 3, effective July 1; (2) amended, p.1627, § 56, effective August 6.

Editor's note: (1) This section was formerly numbered as 19-2-1001. Prior to relocation in 1996, the said section 19-2-1001 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-5-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-204 was relocated to section 19-2-508 when this article was amended with relocations in 1996.

ANNOTATION

Juvenile court had no jurisdiction to order the placement of a juvenile in the custody of the department of human services when the district court ordered that juvenile held in county jail awaiting trial on charges filed against the juvenile as an adult. People v. Juvenile Court, 915 P.2d 1274 (Colo. 1996).

19-2-205. Facility directors - duties. (1) A director of each state-operated facility established by section 19-2-403 and sections 19-2-406 to 19-2-408 shall be appointed by the director of the division of youth corrections pursuant to section 13 of article XII of the state constitution.

(2) It is the duty of the director of each facility established by section 19-2-403 and sections 19-2-406 to 19-2-408:

(a) To report to the executive director of the department of human services at such times and on such matters as the director may require;

(b) To receive juveniles committed to the custody of the department of human services and placed in his or her care under the provisions of this article and to keep them for rehabilitation, education, and training until discharged by law or under the rules of the department of human services or released on parole;

(c) To make a careful and thorough evaluation of every juvenile placed under his or her care at intervals no greater than six months, such evaluation to ascertain whether the juvenile's program should be modified, whether the juvenile's transfer to another facility should be recommended to the said director, or whether the juvenile's release should be recommended to the juvenile parole board;

(d) To take such measures as are necessary to prevent recruitment of new gang members from among the juveniles committed to the custody of the department of human services.

Source: L. 96: Entire article amended with relocations, p. 1604, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-1111 (except (2)(d)(II)). Prior to relocation in 1996, provisions of the said 19-2-1111 were contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-205 was relocated to section 19-2-509 when this article was amended with relocations in 1996.

19-2-206. Juvenile parole board - creation - membership. (1) There is hereby created a juvenile parole board, referred to in this section and section 19-2-207 as the "board", to consist of nine members appointed by the governor and confirmed by the senate. Any vacancy that occurs when the general assembly is not in session may be filled by the governor, and such member shall serve temporarily until confirmed at the next regular session of the general assembly.

(2) All nine members shall be voting members, and, of the nine members:

(a) One member shall be from the department of human services;

(b) One member shall be from the department of education;

(c) One member shall be from the department of public safety;

(d) One member shall be from the department of labor and employment; and

(e) (Deleted by amendment, L. 2008, p. 1105, § 10, effective July 1, 2008.)

(f) Five members shall be from the public at large and shall not be employees of the state government. At least one of the members from the public at large shall be a resident of the area west of the continental divide.

(3) All members shall serve at the pleasure of the governor, and the governor shall designate one member of the board to act as chairperson.

(4) The full board shall meet not less than once a month, and the presence of five members, at least two of whom are members described in paragraph (f) of subsection (2) of this section, shall constitute a quorum to transact official business of the full board.

(5) All members of the board shall be reimbursed for expenses necessarily incurred in the performance of their duties. In addition to the reimbursement of expenses, the five citizen board members shall receive a per diem of one hundred fifty dollars per full day and seventy-five dollars per half day spent transacting official business of the board.

(6) Clerical and other assistance for the board shall be furnished by the department of human services. Such clerical and other assistance shall be supervised by a juvenile parole board administrator appointed by the executive director of the department of human services.

Source: L. 96: Entire article amended with relocations, p. 1604, § 1, effective January 1, 1997. **L. 2001:** Entire section amended, p. 818, § 1, effective July 1. **L. 2008:** (2)(d), (2)(e), (2)(f), (4), and (5) amended, p. 1105, § 10, effective July 1.

Editor's note: (1) This section was formerly numbered as 19-2-1201. Prior to relocation in 1996, the said section 19-2-1201 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-9-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-206 was relocated to section 19-2-504 when this article was amended with relocations in 1996.

19-2-207. Juvenile parole board - authority. The board shall have the authority to grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole for any juvenile committed to the department of human services under section 19-2-601 or 19-2-907 in such a manner as is in the best interests of the juvenile and the public. In addition to any other conditions, the board may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or a GED, as that term is defined in section 22-33-102

(7), C.R.S.; except that the board shall not require any such juvenile to attend a school from which he or she has been expelled without the prior approval of that school's local board of education. The board shall promulgate rules that establish criteria under which its parole decisions are made. The board shall have the duties and responsibilities specified in part 10 of this article.

Source: L. 96: Entire article amended with relocations, p. 1605, § 1, effective January 1, 1997. **L. 99:** Entire section amended, p. 59, § 1, effective July 1. **L. 2012:** Entire section amended, (HB 12-1345), ch. 188, p. 748, § 38, effective May 19.

Editor's note: (1) This section was formerly numbered as 19-2-1202 (1). Prior to relocation in 1996, the said 19-2-1202 (1) was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-9-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-207 was relocated to section 19-2-505 when this article was amended with relocations in 1996.

Cross references: (1) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2016, see sections 21 and 46 of chapter 188, Session Laws of Colorado 2012. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

(2) For the legislative declaration in the 2012 act amending this section, see section 21 of chapter 188, Session Laws of Colorado 2012.

19-2-208. Administrative law judges. An administrative law judge shall assist any hearing panel of the juvenile parole board that is considering the suspension, modification, or revocation of the parole of a juvenile.

Source: L. 96: Entire article amended with relocations, p. 1605, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-1203 (1). Prior to relocation in 1996, the said section 19-2-1203 (1) was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-9-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-208 was relocated to section 19-2-506 when this article was amended with relocations in 1996.

19-2-209. Juvenile parole - organization. (1) Juvenile parole services shall be administered by the division of youth corrections in the department of human services, under the direction of the director of the division of youth corrections, appointed pursuant to section 19-2-203.

(2) Juvenile parole officers and other personnel of the division of youth corrections shall be appointed by the director of the division of youth corrections pursuant to section 13 of article XII of the state constitution and with the consent of the department of human services. Juvenile parole officers shall have the powers and duties specified in part 10 of this article and shall have the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138, C.R.S.

(3) The division of youth corrections may divide juvenile parole supervision into regions throughout the state. Within each region there may be more than one office location for parole officers.

(4) and (5) (Deleted by amendment, L. 2008, p. 1097, § 1, effective July 1, 2008.)

Source: L. 96: Entire article amended with relocations, p. 1605, § 1, effective January 1, 1997. **L. 2003:** (2) amended, p.1627, § 57, effective August 6. **L. 2008:** Entire section amended, p. 1097, § 1, effective July 1.

Editor's note: (1) This section was formerly numbered as 19-2-1204. Prior to relocation in 1996, the said section 19-2-1204 was contained in a title that was repealed and reenacted in 1987. Provisions

of that section, as it existed in 1987, are similar to those contained in 19-9-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-209 was relocated to section 19-2-803 when this article was amended with relocations in 1996.

19-2-210. Juvenile community review board. (1) A board of county commissioners or the city council of the city and county of Denver or more than one board of county commissioners may adopt a written resolution requiring approval by a juvenile community review board of residential community placements within its county of juveniles under commitment to the department of human services. Upon the effective date of such resolution and notice to the department of human services, no juvenile committed to the custody of the department of human services shall be placed into a residential community placement in that county or region unless and until such placement is approved by the juvenile community review board.

(1.5) A juvenile community review board may be consolidated with other local advisory boards pursuant to section 24-1.7-103, C.R.S.

(2) Notification of any placement of a juvenile under the jurisdiction of the juvenile parole board shall be made to the juvenile community review board prior to or at the time of placement.

(3) (a) Prior to placement of a juvenile in a residential community placement, the juvenile community review board shall review the case file of the juvenile. It is the responsibility of the department of human services to provide accurate information regarding the juvenile and the proposed placement to the juvenile community review board. Such information shall include, but not be limited to, a history of delinquent adjudications, a social history, an educational history, a mental health treatment history, a drug and alcohol treatment history, and a summary of institutional progress. Each juvenile referred to the board shall be reviewed within fifteen days from the date the referral is received.

(b) The board shall review the case file of the juvenile and make a decision regarding residential community placement, taking into consideration the results of the objective risk assessment by the department of human services, the needs of the juvenile, and the criteria established by the juvenile community review board based on the interests of the community. Objective risk criteria shall be established and maintained by the department of human services and shall be based upon researched factors that have been demonstrated to be correlative to risk to the community.

(c) All names, addresses, and information regarding a juvenile reviewed by the juvenile community review board shall be confidential and not disclosed except to such board or its designees, the Colorado bureau of investigation, and any law enforcement agency, without express written permission of the juvenile and the legal custodian.

(4) Repealed.

Source: L. 96: Entire article amended with relocations, p. 1606, § 1, effective January 1, 1997. **L. 97:** (1.5) added, p. 1191, § 13, effective July 1. **L. 98:** (4) repealed, p. 730, § 19, effective May 18.

Editor's note: (1) This section was formerly numbered as 19-2-1303, 19-2-1304, and 19-2-1305. Prior to relocation in 1996, the said sections 19-2-1303, 19-2-1304, and 19-2-1305 were contained in a title that was repealed and reenacted in 1987. Provisions of those sections, as they existed in 1987, are similar to those contained in 19-8.5-103, 19-8.5-104, and 19-8.5-105 as said sections existed in 1987 prior to said sections being superseded by the repeal and reenactment of this title.

(2) The former section 19-2-210 was relocated to section 19-2-511 when this article was amended with relocations in 1996.

19-2-211. Local juvenile services planning committee - creation - duties. If all of the boards of commissioners of each county or the city council of each city and county in a judicial district agree, there shall be created in the judicial district a local juvenile services planning committee that shall be appointed by the chief judge of the judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court from persons

recommended by the boards of commissioners of each county or the city council of each city and county within the judicial district. The committee, if practicable, shall include, but need not be limited to, a representative from the county department of social services, a local school district, a local law enforcement agency, a local probation department, the division of youth corrections, private citizens, the district attorney's office, and the public defender's office and a community mental health representative and a representative of the concerns of municipalities. The committee, if created, shall meet as necessary to develop a plan for the allocation of resources for local juvenile services within the judicial district for the fiscal year. The committee is strongly encouraged to consider programs with restorative justice components when developing the plan. The plan shall be approved by the department of human services. A local juvenile services planning committee may be consolidated with other local advisory boards pursuant to section 24-1.7-103, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1607, § 1, effective January 1, 1997. **L. 97:** Entire section amended, p. 1191, § 14, effective July 1. **L. 2007:** Entire section amended, p. 276, § 1, effective March 29.

Editor's note: This section was formerly numbered as 19-2-1602.7.

19-2-212. Working group for criteria for placement of juvenile offenders - establishment of formula - review of criteria. (1) The executive director of the department of human services and the state court administrator of the judicial department, or any designees of such persons, in consultation with the division of criminal justice of the department of public safety, the office of state planning and budgeting, the Colorado district attorneys council, law enforcement representatives, and representatives of local and county governments, shall form a working group that shall carry out the following duties:

(a) To establish a set of criteria for both detention and commitment for the purposes of determining which juvenile offenders are appropriate for placement in the physical or legal custody of the department of human services. Such criteria shall conform with section 19-2-508. This set of criteria, when adopted by the department of human services and the judicial department, shall be used to promote a more uniform system of determining which juveniles should be placed in the physical custody of the department of human services or in the legal custody of the department of human services so that decisions for such placement of a juvenile are made based upon a uniform set of criteria throughout the state. In developing such set of criteria, the working group shall utilize any existing risk scale devised by the department of human services or any other measures to determine when it is appropriate to place a juvenile in the physical custody of the department of human services or in the legal custody of the department of human services. In addition, the criteria shall specifically take into account the educational needs of the juvenile and ensure the juvenile's access to appropriate educational services. The working group established pursuant to this subsection (1) shall hold a meeting once each year to review and propose revision to the criteria established pursuant to this paragraph (a) and the formula created pursuant to paragraph (b) of this subsection (1).

(b) To establish a formula for the purpose of allocating funds by each judicial district in the state of Colorado for alternative services to placing juveniles in the physical custody of the department of human services or in the legal custody of the department of human services. Such allocation shall take into consideration such factors as the population of the judicial district, the incidence of offenses committed by juveniles in such judicial district, and such other factors as deemed appropriate. The working group shall consider and take into account whether any federal moneys or matching funds are available to cover the costs of juveniles within the system, including parent fees and third-party reimbursement as authorized by law or reimbursements under Title IV-E of the federal "Social Security Act", as amended.

(2) Of the members of the working group established pursuant to subsection (1) of this section, the executive director of the department of human services and the state court administrator of the judicial department, or any designees of such persons, shall have final authority to carry out the duty of creating the set of criteria pursuant to paragraph (a) of

subsection (1) of this section and creating the formula pursuant to paragraph (b) of subsection (1) of this section. This authority shall be exercised after working with and participating in the working group process established in this section.

Source: L. 96: Entire article amended with relocations, p. 1607, § 1, effective January 1, 1997. **L. 98:** (1)(a) amended, p. 730, § 20, effective May 18. **L. 2010:** (1)(a) amended, (SB 10-054), ch. 265, p. 1214, § 6, effective May 25.

Editor's note: This section was formerly numbered as 19-2-1602 and 19-2-1605.

19-2-213. Restorative justice coordinating council - establishment - membership - repeal. (1) A council to provide assistance and education related to restorative justice programs is hereby established. The council shall be known as the "restorative justice coordinating council" and shall be established in the state judicial department within the office of the state court administrator. To the extent that resources permit, the restorative justice coordinating council shall support the development of restorative justice programs, serve as a central repository for information, assist in the development and provision of related education and training, and provide technical assistance to entities engaged in or wishing to develop restorative justice programs.

(2) The restorative justice coordinating council shall include, at a minimum, the following:

(a) A member who represents a statewide juvenile justice council who shall be appointed by the executive director of the department of public safety;

(b) A representative from the division of youth corrections in the department of human services who shall be appointed by the executive director of the department of human services;

(c) A representative from the department of public safety who shall be appointed by the executive director of the department of public safety;

(d) A representative from the judicial department who shall be appointed by the state court administrator;

(e) Two representatives from a statewide organization or organizations whose primary purpose is related to the development and implementation of restorative justice programs and who shall be appointed by the executive director of the department of public safety;

(f) A district attorney with juvenile justice experience who shall be appointed by the executive director of the Colorado district attorneys council;

(g) A victim's advocate within the judicial department with restorative justice experience who shall be appointed by the state court administrator; and

(h) A representative from the department of education who shall be appointed by the commissioner of education.

(3) The restorative justice coordinating council shall select a chairperson from among the members of the council who shall serve a term to be determined by the council. The chairperson shall be responsible for convening the council at a frequency that shall be determined by the council.

(4) Members of the restorative justice coordinating council shall serve without compensation and shall not be reimbursed for expenses incurred while serving on the council.

(5) (a) This section is repealed, effective July 1, 2017.

(b) Prior to the repeal, the restorative justice coordinating council shall be reviewed as provided in section 2-3-1203, C.R.S.

Source: L. 2007: Entire section added, p. 277, § 2, effective March 29.

19-2-214. Detention center sexual assault prevention program. (1) The division of youth corrections created in section 19-2-203 shall develop, with respect to sexual assaults that occur in juvenile facilities, policies and procedures to:

(a) Require disciplinary action for employees who fail to report incidences of sexual assault to the inspector general;

(b) Require the inspector general, after completing an investigation for sexual assault, to submit the findings to the district attorney with jurisdiction over the facility in which the alleged sexual assault occurred;

(c) Prohibit retaliation and disincentives for reporting sexual assaults;

(d) Provide, in situations in which there is reason to believe that a sexual assault has occurred, reasonable and appropriate measures to ensure victim safety by separating the victim from the assailant, if known;

(e) Ensure the confidentiality of prison rape complaints and protection of juveniles who make complaints of prison rape;

(f) Provide acute trauma care for sexual assault victims, including but not limited to treatment of injuries, HIV/AIDS prophylactic measures, and testing for sexually transmitted diseases;

(g) Provide, at intake and periodically thereafter, division-approved, easy-to-understand information developed by the division on sexual assault prevention, treatment, reporting, and counseling in consultation with community groups with expertise in sexual assault prevention, treatment, reporting, and counseling;

(h) Provide sexual-assault-specific training to division mental health professionals and all employees who have direct contact with juveniles regarding treatment and methods of prevention and investigation;

(i) Provide confidential mental health counseling to victims of sexual assault;

(j) Monitor victims of sexual assault for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences resulting from the sexual assault; and

(k) Require termination of an employee who engages in a sexual assault on or sexual conduct with a juvenile consistent with constitutional due process protections and state personnel system laws and rules.

(2) Investigation of a sexual assault shall be conducted by investigators trained in the investigation of sex crimes. The investigation shall include, but need not be limited to, use of forensic rape kits, questioning of suspects and witnesses, and gathering and preserving relevant evidence.

(3) The division shall annually report the data that it is required to compile and report to the federal bureau of justice statistics as required by the federal "Prison Rape Elimination Act of 2003", Pub.L. 108-79, as amended, to the judiciary committees of the house of representatives and the senate, or any successor committees.

Source: L. 2007: Entire section added, p. 1546, § 2, effective May 31. **L. 2008:** (1)(e), (1)(h), and (3) amended, p. 1892, § 63, effective August 5.

PART 3

JUVENILE ADMINISTRATIVE PROGRAMS - SERVICES

19-2-301. Short title. This part 3 shall be known and may be cited as "Juvenile Administrative Programs and Services".

Source: L. 96: Entire article amended with relocations, p. 1608, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-301 was relocated to section 19-2-510.

19-2-302. Preadjudication service program created - community advisory board established - duties of board. (1) The chief judge of any judicial district may issue an order that any juvenile who applies for preadjudication release be evaluated for placement by a preadjudication service program established pursuant to this section. In evaluating the juvenile, the service agency shall follow criteria for the placement of a juvenile established pursuant to section 19-2-212. Upon evaluation, the service agency shall make a recommendation to the court concerning placement of the juvenile with a preadjudication service program.

(2) Any county or city and county or judicial district in the state may establish a preadjudication service program for use by the district court for the county or city and county or judicial district. Such program shall be established in accordance with a local justice plan developed pursuant to section 19-2-211.

(3) The local justice plan shall provide for the assessment of juveniles taken into custody and detained by law enforcement officers, which assessment shall be based on criteria for the placement of juveniles established pursuant to section 19-2-212, so that relevant information may be presented to the judge presiding over the detention hearing. The information provided to the court through the screening process, which information shall include the record of any prior adjudication of the juvenile, is intended to enhance the court's ability to make a more appropriate detention and bond decision, based on facts relative to the juvenile's welfare or the juvenile's risk of danger to the community.

(4) The plan may include different methods and levels of community-based supervision as conditions for preadjudication release. The plan may provide for the use of the same supervision methods that have been established for adult defendants as a pretrial release method to reduce pretrial incarceration or that have been established as sentencing alternatives for juvenile or adult offenders placed on probation or parole. The use of such supervision methods is intended to reduce preadjudication detentions without sacrificing the protection of the community from juveniles who may be risks to the public. The plan may provide for the use of any of the following supervision methods as conditions of preadjudication release:

(a) Periodic telephone communications with the juvenile;

(b) Periodic office visits by the juvenile to the preadjudication service agency;

(c) Periodic home visits to the juvenile's home;

(d) Periodic drug testing of the juvenile;

(e) Periodic visits to the juvenile's school;

(f) Mental health or substance abuse treatment for the juvenile, which treatment may include residential treatment;

(g) Domestic violence or child abuse counseling for the juvenile, if applicable;

(h) Electronic or global position monitoring of the juvenile;

(i) Work release for the juvenile, if school attendance is not applicable or appropriate under the circumstances; or

(j) Juvenile day reporting and day treatment programs.

Source: L. 96: Entire article amended with relocations, p. 1609, § 1, effective January 1, 1997. **L. 2006:** (4)(h) amended, p. 19, § 4, effective March 8.

Editor's note: This section was formerly numbered as 19-2-205.5 and the former section 19-2-302 was relocated to section 19-2-703.

19-2-303. Juvenile diversion program - authorized. (1) In order to more fully implement the stated objectives of this title, the general assembly declares its intent to establish a juvenile diversion program that, when possible, integrates restorative justice practices to provide community-based alternatives to the formal court system that will reduce juvenile crime and recidivism, change juvenile offenders' behavior and attitudes, promote juvenile offenders' accountability, recognize and support the rights of victims, heal the harm to relationships and the community caused by juvenile crime, and reduce the costs within the juvenile justice system.

(2) The division of criminal justice of the department of public safety is authorized to establish and administer a juvenile diversion program that, when possible, integrates restorative justice practices. In order to effectuate the program, the division may contract with governmental units and nongovernmental agencies to provide services for eligible youth through community-based projects providing an alternative to a petition filed pursuant to section 19-2-512, an adjudicatory hearing pursuant to section 19-3-505, or dispositions of a juvenile delinquent pursuant to section 19-2-907.

(3) For purposes of this section:

(a) "Director" is defined in section 19-1-103 (42).

(b) "Diversion" is defined in section 19-1-103 (44).
(c) "Governmental unit" is defined in section 19-1-103 (55).
(d) "Nongovernmental agency" is defined in section 19-1-103 (79).
(e) "Services" is defined in section 19-1-103 (96).

(4) Projects soliciting service contracts pursuant to this section must demonstrate that they:

(a) Meet a demonstrated community need as shown by a survey of the type of community, its special circumstances, and the type and number of youth who will be served by the project;

(b) Provide services that do not duplicate services already provided in the community; and

(c) Are supported by the community, as demonstrated through receipt of nonstate funds or in-kind supplies or services to meet at least twenty-five percent of the total cost of the project.

(5) When applying for a contract with the division of criminal justice to provide services to youths under the juvenile diversion program, a community project shall submit for review by the division a list of the project's objectives, a list of the restorative justice practices, if applicable, included in the project, a report of the progress made during the previous year if applicable toward implementing the stated objectives, an annual budget, and such other documentation as may be required by the director.

(6) (a) Each project providing services under this section shall develop objectives and report progress toward such objectives as required by rules and regulations promulgated by the director.

(b) The director shall regularly monitor these diversion projects to ensure that progress is being made to accomplish the objectives of this section.

(7) The executive director of the department of public safety is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of providing restorative justice programs; except that no gift, grant, or donation shall be accepted if the conditions attached to it require the expenditure thereof in a manner contrary to law.

(8) (a) The director may implement a mental illness screening program to screen juveniles who participate in the juvenile diversion program. If the director chooses to implement a mental illness screening program, the director shall use the standardized mental illness screening developed pursuant to section 16-11.9-102, C.R.S., and conduct the screening in accordance with procedures established pursuant to said section.

(b) Prior to implementation of a mental illness screening program pursuant to this subsection (8), if implementation of the program would require an increase in appropriations, the director shall submit to the joint budget committee a request for funding in the amount necessary to implement the mental illness screening program. If implementation of the mental illness screening program would require an increase in appropriations, implementation of the program shall be conditional upon approval of the funding request.

Source: L. 96: Entire article amended with relocations, p. 1610, § 1, effective January 1, 1997. **L. 99:** (7) added, p. 69, § 2, effective August 4. **L. 2002:** (8) added, p. 575, § 6, effective May 24. **L. 2008:** (1), (2), and (5) amended, p. 226, § 2, effective March 31.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, were contained in several sections in 1986, the year prior to the repeal and reenactment of this title. For a detailed comparison see the "Children's Code (1987)" table located in the back of the index.

Cross references: For provisions relating to volunteerism in connection with this program, see article 31 of title 17.

19-2-303.5. Juvenile diversion cash fund - creation. (1) Fifty percent of the moneys collected pursuant to section 18-4-509 (2) (a), C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the juvenile diversion cash fund, which fund is

hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of the juvenile diversion program pursuant to section 19-2-303.

(2) The division of criminal justice of the department of public safety is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of implementing the juvenile diversion program pursuant to section 19-2-303. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund.

(3) Any moneys in the fund not expended for the purpose of the juvenile diversion program may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund.

(4) Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2003: Entire section added, p. 1905, § 7, effective July 1.

19-2-304. Parental responsibility training programs - criteria. (1) The state department of human services, after consultation with the state department of public safety and the judicial department, shall establish standards and guidelines for parental responsibility training programs for the parent, guardian, or legal custodian of a juvenile or juvenile delinquent that shall include, but shall not be limited to, instruction in the following:

(a) Physical, mental, social, and emotional child growth and development;

(b) Skill development for parents in providing for the child's learning and development, including teaching the child responsibility for his or her actions;

(c) Prevention of drug abuse;

(d) Family structure, function, and management; and

(e) The physical, mental, emotional, social, economic, and psychological aspects of interpersonal and family relationships.

(2) The state department of human services is authorized and directed to establish such standards and guidelines within the available resources of the state government and each of the state departments described in subsection (1) of this section.

Source: L. 96: Entire article amended with relocations, p. 1611, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1401 and the former section 19-2-304 was relocated to section 19-2-512.

19-2-305. Intensive family preservation program - adjudicated juveniles - legislative declaration - financing for program - cash fund created - report - repeal. (Repealed)

Source: L. 96: Entire article amended with relocations, p. 1611, § 1, effective January 1, 1997.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 1998. (See L. 96, p. 1611.)

19-2-306. Juvenile intensive supervision program - creation - judicial department. The judicial department may establish and operate, either directly or by contracting with one or more private organizations, a juvenile intensive supervision program, which may be utilized by any judge in sentencing any juvenile who has been placed on probation and who presents a high risk of future placement within juvenile correctional facilities according to assessment criteria developed pursuant to section 19-2-307 (2).

Source: L. 96: Entire article amended with relocations, p. 1615, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1501 and the former section 19-2-306 was relocated to section 19-2-514.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

The enactment of the Juvenile Intensive Supervision Program does not change requirements of former § 19-2-803 (2)(a) (now § 19-2-908 (1)(c)(I)(A)), as such program applies to any juvenile who has been placed on probation and who presents a high risk of future placement within juvenile correctional facilities. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

19-2-307. Juvenile intensive supervision program - elements. (1) The juvenile intensive supervision program created by section 19-2-306 shall include, but shall not be limited to, utilization of any or all of the following elements:

(a) Increased supervision of the juvenile by probation officers;

(b) Utilization of specific youth case management approaches;

(c) Community service work assignments;

(d) Restitution programs;

(e) Structured group training regarding problem solving, social skills, negotiation skills, emotion management, creative thinking, value enhancement, and critical reasoning;

(f) Use of electronic or global position monitoring and substance abuse testing to monitor compliance with the program by the juvenile and providing sanctions for failure to comply with the program; and

(g) Individual and family treatment.

(2) The judicial department shall be assisted in developing assessment criteria for placement in the juvenile intensive supervision program and judicial department guidelines for implementation of the program and measurement of the outcome of the program by a juvenile intensive supervision advisory committee. Such advisory committee shall be appointed by the state court administrator and shall include, but shall not be limited to, representatives of the division of youth corrections in the department of human services and the division of criminal justice of the department of public safety.

Source: L. 96: Entire article amended with relocations, p. 1615, § 1, effective January 1, 1997. **L. 2006:** (1)(f) amended, p. 19, § 5, effective March 8.

Editor's note: This section was formerly numbered as 19-2-1502 and the former section 19-2-307 was relocated to section 19-2-515.

19-2-308. Community service and work programs. (1) As a condition of a deferral of adjudication or of probation, in conjunction with other dispositional orders, or otherwise, the court may order the juvenile to participate in a supervised community service or community work program if the court finds that the program will promote the purposes of this title as set forth in section 19-1-102.

(2) Participation by the juvenile or by both the juvenile and the parent or guardian of the juvenile in a community service or work program may be ordered in addition to or in conjunction with an order to pay restitution pursuant to section 19-2-918 or 19-2-919.

(3) With the written consent of the victim of the juvenile's delinquent act, the juvenile or both the juvenile and the custodial parent, the juvenile's parent who has parental responsibilities, or the guardian of the juvenile may be ordered to perform work for the victim.

(4) Any order issued by the court pursuant to this section shall be structured to allow the juvenile to continue regular school attendance and any employment, if appropriate, and shall be suitable to the age and abilities of the juvenile. The amount of community service

or work ordered shall be reasonably related to the seriousness of the juvenile's delinquent act.

(5) The court may order any agency or person supervising a juvenile in a community service or work program to advise the court concerning the juvenile's participation in the program in such manner as the court requires.

(6) The court may order, as a condition of probation, that the juvenile be placed out of the home in a residential child care facility providing a supervised work program or that the juvenile in such facility report to a supervised work program if the court finds the following:

(a) That the juvenile will not be deprived of the education that is appropriate to his or her age, needs, and specific rehabilitative goals;

(b) That the supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the juvenile, and is combined with counseling from a probation officer or other guidance personnel; and

(c) That the supervised work program assignment is made for a period of time consistent with the juvenile's best interest but not exceeding one hundred eighty days.

(7) The probation department of the court shall be responsible for establishing and identifying suitable work programs and assignments. There shall be cooperation of boards of county commissioners, county sheriffs, and political subdivisions in helping to establish work programs. The cooperation of suitable nonprofit organizations and other entities may be sought to establish suitable work programs.

(8) For purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., "public employee" does not include any juvenile who is ordered to participate in a work or community service program under this section.

(9) No governmental entity or cooperating nonprofit organization shall be liable under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., or under the "Colorado Employment Security Act", articles 70 to 82 of title 8, C.R.S., for any benefits on account of any juvenile who is ordered to participate in a work or community service program under this section, but nothing in this subsection (9) shall prohibit a governmental entity or cooperating nonprofit organization from electing to accept the provisions of the "Workers' Compensation Act of Colorado" by purchasing and keeping in force a policy of workers' compensation insurance covering such person.

(10) Any general public liability insurance policy obtained to cover juveniles performing work or community service pursuant to this section and to provide coverage for injuries caused to or by juveniles performing work or community service pursuant to this section shall be in a sum of not less than the current limit on government liability under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1616, § 1, effective January 1, 1997. **L. 98:** (3) amended, p. 1408, § 68, effective February 1, 1999.

Editor's note: (1) This section was formerly numbered as 19-2-706. Prior to relocation in 1996, the said section 19-2-706 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-117.1 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-308 was relocated to section 19-2-702 when this article was amended with relocations in 1996.

Cross references: For community or useful public service for persons convicted of misdemeanors, see § 18-1.3-507; for useful public service for persons convicted of alcohol- or drug-related traffic offenses, see § 42-4-1301; for community or useful public service for class 1 and class 2 misdemeanor traffic offenders, see § 42-4-1701.

19-2-309. Regimented juvenile training program - legislative declaration - repeal. (Repealed)

Source: L. 96: Entire article amended with relocations, p. 1617, § 1, effective January 1, 1997. **L. 97:** (2)(a) and (7) amended and (6.5) added, p. 362, § 1, effective April 19.

L. 98: (6) repealed and (6.5) amended, pp. 731, 732, §§ 21, 22, effective May 18. **L. 2000:** (2)(c), (3)(a), (6.5)(c), and (7) amended, p. 995, § 1, effective May 26.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 2001. (See L. 2000, p. 995.)

19-2-309.5. Community accountability program - legislative declaration - creation. (1) It is the intent of the general assembly that the program established pursuant to this section benefit the state by providing a structured program combining residential and community reintegration components under which certain adjudicated juveniles are subject to an ordered environment affirming the dignity of self and others; promoting the value of education, work, and accountability; adhering to the principals of restorative justice; and developing useful skills that can be applied when the juvenile is reintegrated into the community.

(2) (a) The division of youth corrections, pursuant to a contract with one or more private entities, shall establish, maintain, and operate a community accountability program, referred to in this section as the "program".

(b) The program shall provide a sentencing option for adjudicated juveniles who are at least fourteen years of age but younger than eighteen years of age. An adjudicated juvenile may be sentenced to participate in the program only as a condition of probation. A sentence to the program may be in addition to, but shall not be in lieu of, a mandatory sentence required by section 19-2-911 (2). The juvenile court shall consider the program as a sentencing option for higher risk juveniles who would have otherwise been sentenced to detention or out-of-home placement or committed to the department of human services.

(c) A sentence imposed pursuant to this section shall be conditioned on the availability of space in the program and the division of youth corrections' determination of whether the juvenile's participation in the program is appropriate. A juvenile may be denied participation in the program upon a determination by the division that a physical or mental condition, including severe substance abuse, will prevent the juvenile's full participation in the program. Any juvenile denied participation in the program shall be returned to the juvenile court for resentencing.

(d) The judicial department shall provide information to the division of youth corrections concerning sentencing of the juvenile, including but not limited to the juvenile's criminal history, the presentence investigation report, the risk-need assessment, and demographics pertaining to the juvenile.

(e) The program shall be established for up to eighty beds. Under the contract entered into pursuant to paragraph (a) of this subsection (2), the division of youth corrections shall pay only for the actual number of juveniles placed in the program.

(3) If feasible, the program may be established regionally, one in each of the division of youth corrections' regions. The division, through a competitive bid process, shall select one or more private entities to operate the program.

(4) (a) The program shall consist of two integrated components. Each selected entity shall provide both components within the contracted region as follows:

(I) **Component I.** Component I shall consist of a sixty-day residential program, which may contain, but need not be limited to, the following program elements:

(A) Assessment and treatment planning;
(B) Behaviorally based programming with appropriate sanctions and reinforcements;
(C) Life and cognitive skill development;
(D) Treatment interventions;
(E) Educational and vocational training;
(F) Competency development;
(G) Victim awareness and empathy;
(H) Gender-specific programming; and
(I) Restorative justice programming.

(II) **Component II.** Component II shall be administered by the division of youth corrections and shall consist of a community reintegration phase. Each juvenile entering component II shall have a reintegration plan jointly established by the division of youth

corrections and the local probation department. Component II may contain, but need not be limited to, the following program elements:

(A) Multi-systemic therapy;
(B) Functional family therapy;
(C) Aggression replacement training;
(D) Life skills;
(E) Skills development;
(F) Behaviorally based programming with appropriate sanctions and reinforcements;
(G) Education and vocational training;
(H) Work experience;
(I) Victim empathy;
(J) Victim-offender mediation;
(K) Gender-specific programming; and
(L) Restorative justice programming.

(b) The program may be housed in a privately owned and operated facility or in a state-owned and privately operated facility. The departments and any private contractors in each region shall involve local governments in identifying locations for residential facilities.

(c) The division shall include a community involvement component in the development of reintegration plans, which may include the creation of community advisory boards.

(5) If a juvenile in the first component of the program would substantially benefit, the division of youth corrections shall notify the local department of probation who may petition the court for an extension of up to fifteen days in addition to the initial sixty-day period for the first component of the program. The period of time a juvenile spends in the second component of the program shall not exceed one hundred twenty days. The entire period of a juvenile's participation in the program shall not exceed the length of the juvenile's probation sentence. Whenever a juvenile fails to progress through or complete the first or second component of the program, the juvenile shall be subject to the provisions of section 19-2-925 (4) for violating a condition of probation.

(6) The division of youth corrections and the judicial department shall jointly establish guidelines for the program and each of the components thereof described in subsection (4) of this section. Necessary support services for the juvenile and the juvenile's family shall be made available under both components of the program, as deemed appropriate by the division of youth corrections.

(7) Repealed.

(8) The division of youth corrections shall conduct an ongoing evaluation of the program. On or before January 15, 2003, and on or before January 15 each year thereafter, the division of youth corrections shall submit a report of the evaluation results to the general assembly. The division may contract for the services and labor necessary to perform the ongoing evaluation.

Source: L. 2001: Entire section added, p. 714, § 1, effective May 31. **L. 2004:** (2)(a) amended, p. 194, § 7, effective August 4. **L. 2011:** (7) repealed, (SB 11-104), ch. 44, p. 114, § 2, effective August 10.

Editor's note: Subsection (7)(c) provided for the repeal of subsection (7), effective July 1, 2011. (See L. 2001, p. 714.)

19-2-310. Appropriations to department of human services for services to juveniles. The general assembly shall appropriate moneys for the provision of services to juveniles to the department of human services which shall allocate such moneys by each judicial district in the state. Such appropriation and allocation shall be made based upon the formula developed in section 19-2-212 (1) (b). The department of human services shall administer such appropriated moneys. The moneys appropriated to the department of human services for allocation by each judicial district shall be expended in such judicial district by the department of human services for services to juveniles that are intended to prevent the juvenile from being held in detention prior to adjudication, sentenced to detention, or committed to the department of human services or to reduce the length of time

the juvenile is held in preadjudication or postadjudication detention or held in a commitment facility operated under section 19-2-403. If a judicial district has a local juvenile services planning committee, the expenditure of moneys for juvenile services in such judicial district shall be made in accordance with the plan developed pursuant to section 19-2-211.

Source: L. 96: Entire article amended with relocations, p. 1620, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1603.

19-2-311. Victim-offender conferences - pilot program. The division of youth corrections is authorized to establish a pilot program, when funds become available, in its facilities to facilitate victim-initiated victim-offender conferences whereby a victim of a crime may request a facilitated conference with the juvenile who committed the crime, if the juvenile is in the custody of the division of youth corrections. After such a pilot program is established, the division of youth corrections may establish policies and procedures for the victim-offender conferences using volunteers to facilitate the conferences. The volunteers shall complete the division of youth corrections' volunteer and facility-specific training programs and complete high-risk victim-offender training and victim advocacy training. The division of youth corrections shall not compensate or reimburse a volunteer or victim for any expenses. If a pilot program is available, and subsequent to the victim's or the victim representative's request, the division of youth corrections shall arrange such a conference only after determining that the conference would be safe and only if the juvenile agrees to participate. The purposes of the conference shall be to enable the victim to meet the juvenile, to obtain answers to questions only the juvenile can answer, to assist the victim in healing from the impact of the crime, and to promote a sense of remorse and acceptance of responsibility by the juvenile that may contribute to his or her rehabilitation.

Source: L. 2011: Entire section added, (HB 11-1032), ch. 296, p. 1404, § 10, effective August 10.

PART 4

JUVENILE FACILITIES

19-2-401. Short title. This part 4 shall be known and may be cited as "Juvenile Facilities".

Source: L. 96: Entire article amended with relocations, p. 1621, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-401 was relocated to section 19-2-109.

19-2-402. Juvenile detention services and facilities to be provided by department of human services - education. (1) (a) Detention services for temporary care of a juvenile, pursuant to this article, shall be provided by the department of human services, which shall consult on a regular basis with the court in any district where a detention facility is located concerning the detention program at that facility. The department may use staff secure facilities to provide preadjudication and postadjudication detention services.

(b) Detention facilities operated by or under contract with the department of human services, subject to limitations on physical capacity and programs, shall receive and provide care for any juvenile arrested for or convicted of a violation of any provision of articles 1 to 15 of title 33, C.R.S., or any rule or regulation promulgated thereunder, or any article of title 42, C.R.S., or any municipal or county ordinance and for any juvenile found in

contempt of court in connection with a violation or an alleged violation of any of those articles or any municipal or county ordinance.

(2) Detention facilities operated in part by a state court, pursuant to section 13-3-108, C.R.S., shall be operated in the same manner by the department of human services, within the limits of available funds appropriated for such purpose.

(3) (a) The school boards of the school districts that a juvenile detention facility serves or in which the juvenile detention facility is located, when requested by the judge of the juvenile court, shall furnish teachers and any books or equipment needed for the proper education of such juveniles as may be present in the juvenile detention facility.

(b) The expenses incurred by a school district pursuant to paragraph (a) of this subsection (3), minus the total amount of per-pupil revenues that the school district receives pursuant to article 54 of title 22, C.R.S., for the juveniles in the juvenile detention facility, shall be shared and paid by each school district served in the proportion that the enrollment of each school district bears to the total enrollment of all the districts served.

(c) (I) For the 2006-07 budget year and each budget year thereafter, the expenses incurred by a school district pursuant to paragraph (b) of this subsection (3) shall be shared and paid by the school district, each charter school of the district, and each institute charter school located in the school district. Each charter school of the district and institute charter school shall pay in the proportion that the charter school of the district's or institute charter school's enrollment bears to the total district enrollment.

(II) For the purpose of this paragraph (c), "total district enrollment" means the total of the pupil enrollment in the school district, plus the district on-line enrollment, the district preschool program enrollment, and the pupil enrollment in each institute charter school that is located within the school district, as determined in accordance with article 54 of title 22, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1621, § 1, effective January 1, 1997. **L. 2006:** (3)(b) amended and (3)(c) added, p. 661, § 4, effective April 28. **L. 2009:** (3)(c)(II) amended, (SB 09-292), ch. 369, p. 1950, § 36, effective August 5.

Editor's note: (1) This section was formerly numbered as 19-2-1115. Prior to relocation in 1996, the said 19-2-1115 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-402 was relocated to section 19-2-706 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Duty of department of institutions to provide detention services is mandatory under subsection (1)(a). People in Interest of S.C., 802 P.2d 1101 (Colo. App. 1989).

19-2-402.5. Juvenile detention facilities - catchment areas. (1) (a) The executive director of the department of human services and the state court administrator in the judicial department shall together establish geographical catchment areas for the juvenile detention facilities operated by or under contract with the department of human services. To the extent practicable, the detention catchment areas shall be established to ensure that the juvenile is held in a juvenile detention facility located within the judicial district in which the offense is committed. For judicial districts in which no juvenile detention facility is located, the department shall establish the catchment areas based on considerations of proximity, bed availability, workload, and cost efficiency.

(b) On or before October 1, 1998, and each October 1 thereafter, the working group established in section 19-2-212 shall submit recommendations to the executive director of the department of human services and the state court administrator concerning configuration of the detention catchment areas and the placement of detained juveniles.

(2) On or before December 1, 1998, the executive director of the department of human services and the state court administrator shall submit a description of the detention catchment areas to the joint budget committee and to the judiciary committees of the senate and house of representatives. The executive director and the state court administrator shall annually reexamine the detention catchment areas and submit a description of any changes in the detention catchment area boundaries to the joint budget committee and to the judiciary committees of the senate and house of representatives by December 1.

Source: L. 98: Entire section added, p. 1062, § 1, effective August 5.

19-2-403. Human services facilities - authority. (1) The department of human services shall establish and operate facilities necessary for the care, education, training, treatment, and rehabilitation of those juveniles legally committed to its custody under section 19-2-601 or 19-2-907. As necessary and when funds are available for such purposes, such facilities may include but shall not be limited to:

(a) Group care facilities and homes, including halfway houses, nonresidential transition programs, day reporting and day treatment centers, and staff secure facilities;

(b) Training schools;

(c) Conservation camps;

(d) Diagnostic and evaluation centers and receiving centers; and

(e) Any programs necessary to implement the purposes of this section for juveniles in community placement.

(2) The department shall cooperate with other governmental units and agencies, including appropriate local units of government, state departments and institutions, and agencies of the federal government in order to facilitate the training and rehabilitation of youth.

(3) Once a juvenile is committed to the department of human services, the juvenile shall remain in a facility directly operated by the department of human services or in a secure facility contracted for by the department of human services until his or her commitment expires as provided by law, parole status is granted pursuant to part 10 of this article, or a community placement is approved by order of the juvenile court and by a juvenile community review board, if one exists in the county of proposed placement.

(4) The department of human services shall contract with the department of corrections to house in an appropriate facility operated by the department of human services and, as appropriate, to provide services to any juvenile under the age of fourteen years who is sentenced as an adult to the department of corrections. On reaching fourteen years of age, any juvenile sentenced to the department of corrections shall be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

Source: L. 96: Entire article amended with relocations, p. 1621, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-1101. Prior to relocation in 1996, the said section 19-2-1101 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-403 was relocated to section 19-2-707 when this article was amended with relocations in 1996.

19-2-403.3. Juvenile facility employees. (1) On and after April 1, 2004, the department of human services shall not hire a person who is required to register as a sex offender pursuant to the provisions of the "Colorado Sex Offender Registration Act", article 22 of title 16, C.R.S., to work at a juvenile facility.

(2) The department of human services shall ensure that any person who is employed to work at a juvenile facility as of April 1, 2004, and who is required to register as a sex offender pursuant to the provisions of the "Colorado Sex Offender Registration Act",

article 22 of title 16, C.R.S., does not have unsupervised contact with a juvenile in the facility on and after April 1, 2004.

(3) If a person, while employed by the department of human services, is convicted of an offense that requires the employee to register as a sex offender pursuant to the provisions of the "Colorado Sex Offender Registration Act", article 22 of title 16, C.R.S., the employee shall immediately notify the department of human services of the conviction and the registration requirement. The department of human services shall ensure that the employee does not have unsupervised contact with a juvenile in the facility on and after the date it receives notice pursuant to this subsection (3).

(4) The executive director of the department of human services shall adopt such rules as may be necessary to ensure compliance with the requirements of this section.

Source: L. 2004: Entire section added, p. 231, § 3, effective April 1.

19-2-403.5. Legislative declaration - eminent domain - detention facility site. (1) The general assembly hereby finds and declares that:

(a) The juvenile detention facilities currently located within the city and county of Denver are inadequate to house the dramatically increasing number of juveniles being held in detention by or committed to the custody of the department of human services and this inadequacy poses a serious and immediate threat to public safety;

(b) During the 1994 legislative session, the general assembly attempted to address this situation by appropriating additional state moneys for a new sixty-bed juvenile detention facility to be located in the city and county of Denver;

(c) Although the city and county of Denver was to select a proposed site for this juvenile detention facility, the city and county of Denver had refused to do so until just recently;

(d) Due to numerous factors, the two proposed sites that the city and county of Denver finally recommended are not suitable for a juvenile detention facility;

(e) Due to Denver's delays and refusal to recommend a suitable site, the situation regarding the number of juvenile detention beds located in the city and county of Denver has reached a critical point and it has become necessary for the state of Colorado to take action in order to address this situation;

(f) Granting the department of human services the power of eminent domain to acquire private or public property for juvenile detention facilities in the city and county of Denver is reasonably related to the legitimate state interest of providing a sufficient number of juvenile detention beds within the city and county of Denver so that the department can adequately house the number of juveniles held in detention or committed to the department's custody; and

(g) A general law cannot be made applicable to address the provision of juvenile detention facility beds within the city and county of Denver.

(2) (a) Subject to the provisions of subsection (3) of this section, the department of human services has the right to acquire by eminent domain any real property that is located within the Denver metropolitan area that is necessary for the establishment of one or more juvenile detention facilities. Such real property shall be acquired in accordance with articles 1 to 7 of title 38, C.R.S.

(b) Any real property specified in paragraph (a) of this subsection (2) that is already devoted to a public use may be acquired by the department of human services pursuant to this section; except that no property owned by the federal government may be acquired without the consent of the federal government.

(3) Prior to the acquisition of any real property pursuant to subsection (2) of this section, the proposed acquisition must be reviewed and approved by the joint budget committee established pursuant to section 2-3-201, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1622, § 1, effective January 1, 1997.

19-2-404. Facilities - control and restraint - liability - duty to pursue runaways. (1) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article whether publicly or privately operated for short-term or long-term commitment or detention is authorized to respond in a reasonable manner to issues of control and restraint of adjudicated juveniles when necessary. Each facility or program shall establish clearly defined policies and procedures for the short-term restraint and control of adjudicated juveniles housed within the facility or receiving services in the nonresidential program.

(2) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article and any person employed by said facility or program shall not be liable for damages arising from acts committed in the good faith implementation of this section; except that the facility or program and any person employed by the facility or program may be liable for acts that are committed in a willful and wanton manner.

(3) Any facility that houses adjudicated juveniles pursuant to this article shall have a duty to notify the court and the local law enforcement agency as soon as possible after discovering that an adjudicated juvenile housed at the facility has run away.

Source: L. 96: Entire article amended with relocations, p. 1623, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-404 was relocated to section 19-2-705.

ANNOTATION

The immunity provided in subsection (2) applies only to actions committed in the good faith implementation of this section. Gilmore v. Concerned Parents of Pueblo, 28 P.3d 963 (Colo. App. 2000), aff'd on other grounds, 47 P.3d 311 (Colo. 2002).

Where the defendant neither alleged nor presented any evidence indicating that the juvenile had been "adjudicated", the immunity provided in subsection (2) does not apply. Gilmore v. Concerned Parents of Pueblo, 28 P.3d 963 (Colo. App. 2000), aff'd on other grounds, 47 P.3d 311 (Colo. 2002).

19-2-405. Receiving centers - designation. (1) The department of human services shall designate receiving centers for juvenile delinquents committed to the department under section 19-2-601 or 19-2-907.

(2) If a change is made in the designation of a receiving center by the department of human services, it shall so notify the juvenile courts at least thirty days prior to the date that the change takes effect.

Source: L. 96: Entire article amended with relocations, p. 1624, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-1102. Prior to relocation in 1996, the said section 19-2-1102 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-405 was relocated to section 19-2-708 when this article was amended with relocations in 1996.

19-2-406. Lookout Mountain school. (1) There is hereby established at Golden, Jefferson county, a training school known as the Lookout Mountain school, under the supervision and control of the department of human services.

(2) The school shall provide care, education, training, and rehabilitation for juveniles ten years of age or older who have been committed to the custody of the department under section 19-2-601 or 19-2-907. In addition, the school may provide care, education, training, and rehabilitation for any juvenile who has been sentenced to the department of corrections

and is being housed in a facility operated by the department of human services pursuant to a contract with the department of corrections as provided in section 19-2-403 (4).

Source: L. 96: Entire article amended with relocations, p. 1624, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1106. Prior to relocation in 1996, the said section 19-2-1106 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

This section does not dictate that the department of human services alone must perform the education and training services. Rather, the department may contract with other public and private agencies to assist in carrying out its responsibilities. Dept. of Human Servs. v. May, 1 P.3d 159 (Colo. 2000).

19-2-407. Mount View school. (1) There is hereby established near Morrison, Jefferson county, a training school known as the Mount View school under the supervision and control of the department of human services.

(2) The school shall provide care, education, training, and rehabilitation for juveniles ten years of age or older who have been committed to the custody of the department under section 19-2-601 or 19-2-907. In addition, the school may provide care, education, training, and rehabilitation for any juvenile who has been sentenced to the department of corrections and is being housed in a facility operated by the department of human services pursuant to a contract with the department of corrections as provided in section 19-2-403 (4).

Source: L. 96: Entire article amended with relocations, p. 1624, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1107. Prior to relocation in 1996, the said section 19-2-1107 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-408. Youth camps. The department of human services may establish and administer youth camps. Staff at youth camps shall provide care, education, training, rehabilitation, and supervision for juveniles ten years of age or older who have been committed to the custody of the department under section 19-2-601 or 19-2-907.

Source: L. 96: Entire article amended with relocations, p. 1624, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1108. Prior to relocation in 1996, the said section 19-2-1108 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-409. Alternate placement. The executive director of the department of human services may assign any juvenile placed by the department of human services in any facility established under section 19-2-403, 19-2-406, or 19-2-407 to any other facility established by said sections for educational training, treatment, or rehabilitation programs. The assignment and the transportation of a juvenile to and from such programs on a daily basis shall not constitute a transfer or change of placement of the juvenile.

Source: L. 96: Entire article amended with relocations, p. 1625, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1109. Prior to relocation in 1996, the said section 19-2-1109 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-410. Contracts and agreements with public and private agencies. (1) The executive director of the department of human services shall, subject to available appropriations, enter into agreements or contracts deemed necessary and appropriate with any governmental unit or agency or private facility or provider cooperating or willing to cooperate in a program to carry out the purposes of this article. Such contracts or agreements may provide, among other things, for the type of work to be performed at a camp or other facility, for the rate of payment for such work, and for other matters relating to the care and treatment of juveniles.

(2) Placement of juveniles by the department of human services in any public or private facility not under the jurisdiction of the department shall not terminate the legal custody of the department.

(3) The department shall have the right to inspect all facilities used by it and to examine and consult with persons in its legal custody who have been placed in any such facility.

(4) (a) On and after April 1, 2004, an entity that contracts with the department of human services for the operation of a private juvenile facility shall not employ a person who is required to register pursuant to the provisions of the "Colorado Sex Offender Registration Act", article 22 of title 16, C.R.S., to work in the private juvenile facility.

(b) For the purposes of a contract in existence as of April 1, 2004, if a contractor employs a person in a private juvenile facility who is required to register as a sex offender pursuant to the provisions of the "Colorado Sex Offender Registration Act", article 22 of title 16, C.R.S., the contractor shall ensure that the person does not have unsupervised contact with a juvenile in the facility on and after April 1, 2004. Failure to comply with the provisions of this subsection (4) shall constitute a breach and grounds for termination of the contract.

Source: L. 96: Entire article amended with relocations, p. 1625, § 1, effective January 1, 1997. **L. 2004:** (4) added, p. 232, § 4, effective April 1.

Editor's note: This section was formerly numbered as 19-2-1110. Prior to relocation in 1996, the said section 19-2-1110 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

This section contains no express or implied prohibition on the placement of juveniles in out-of-state facilities. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993).

19-2-411. Facilities for juvenile offenders. The executive director of the department of human services shall adopt rules and implement a process to issue requests for proposals with respect to contracts for designing, financing, acquiring, constructing, and operating private facilities for juvenile offenders. The process to issue requests for proposals and privatization contracts shall meet the requirements set forth in part 2 of article 1 of title 17, C.R.S., with respect to private adult correctional facilities.

Source: L. 96: Entire article amended with relocations, p. 1625, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1115.5.

19-2-411.5. Juvenile facility - contract for operation. (1) The department of human services is hereby authorized to contract with a private contractor for the operation of a five-hundred-bed facility to house juveniles who are in the custody of the department of human services and to house juveniles who are in the temporary custody of a county department of social services. The facility shall follow an academic model, providing educational, vocational, and positive developmental programming. The contractor shall work with the department of human services to develop and maintain high-quality programming that is appropriate for and meets the needs of the juveniles placed in the facility. The facility shall be constructed in a campus-style design and located on the parcel of real property formerly known as the Lowry bombing range. The state shall retain ownership of the facility constructed and operated pursuant to this section. Nothing in this section requires that the parcel of real property formerly known as the Lowry bombing range be used exclusively for the facility constructed pursuant to this section.

(2) In choosing a contractor, the executive director of the department of human services shall ensure that the contractor and the contract meet the following requirements:

(a) The executive director of the department of human services shall select the lowest responsible bid by the contractor most qualified to operate the facility on an academic model, subject to available appropriations. Prior to final selection, the executive director shall confirm that the contractor has the qualifications, experience, and management personnel necessary to carry out the terms of the contract.

(b) The contractor shall agree to indemnify the state and the department of human services, including their officials and agents, against any and all liability including but not limited to any civil rights claims. The department of human services shall require proof of satisfactory insurance, the amount of which shall be determined by the department of human services following consultation with the division of insurance in the department of regulatory agencies.

(c) The facility and the management plan for juveniles housed at the facility shall meet the requirements of applicable court orders and state law.

(d) The contractor shall be responsible for a range of dental, medical, and psychological services and diet, education, and work programs at least equal to those services and programs provided by the department of human services at comparable state juvenile facilities. The work and education programs shall be designed to reduce recidivism.

(e) The department of human services shall monitor the facility, and the contractor shall bear the costs of monitoring.

(3) The contract for operation of the facility shall be subject to annual renewal. The contract for operation of the facility shall specify the responsibilities the department of human services shall retain with regard to juveniles housed at the facility and the responsibilities the contractor shall exercise.

(4) The contractor shall require applicants for employment at the facility to submit a set of fingerprints to the Colorado bureau of investigation for a criminal background check, and the Colorado bureau of investigation may accept such fingerprints. For the purpose of conducting background checks, to the extent authorized by federal law, the Colorado bureau of investigation may exchange with the department any state, multi-state, and federal criminal history records of individuals who apply for employment at the facility.

(5) On an annual basis, the department of human services shall calculate the recidivism rate for committed juveniles in the custody of the department of human services who complete the program offered by the facility. In calculating the recidivism rate, the department of human services shall include any juvenile who commits a criminal offense, either as a juvenile or as an adult, within three years after leaving the facility. The department of human services shall report the recidivism rate to the general assembly.

Source: L. 97: Entire section added, p. 1046, § 1, effective May 27. **L. 2012:** Entire section amended, (SB 12-099), ch. 92, p. 303, § 1, effective April 12.

19-2-412. Transfer of detention facilities and equipment. Whenever the department of human services determines that any property, facilities, and equipment are no longer

needed for juvenile detention facilities, the department shall transfer said property, facilities, and equipment back to the county without any cost to the county.

Source: L. 96: Entire article amended with relocations, p. 1625, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1116.

19-2-413. Facility publications. Publications of any of the facilities established by section 19-2-403 and sections 19-2-406 to 19-2-408 intended for circulation in quantity outside such facility shall be subject to the "Information Coordination Act", section 24-1-136, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1625, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1112. Prior to relocation in 1996, the said section 19-2-1112 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-414. Facility rules - academic and vocational courses. (1) It is the duty of the department of human services to develop such rules and regulations as may be necessary for imparting instruction, preserving health, and enforcing discipline of juveniles committed to the department.

(2) The academic courses of study and vocational training and instruction given in the facilities established by section 19-2-403 and sections 19-2-406 to 19-2-408 shall include those approved by the department of education for the instruction of pupils in the primary and secondary schools of the state. Full credit shall be given by school districts in this state for completion of any semester, term, or year of study instruction by any juvenile who has earned credit therefor.

(3) The director of the division of youth corrections may appoint, pursuant to section 13 of article XII of the state constitution, a director and such other officers, teachers, instructors, counselors, and other personnel as the director may consider necessary to transact the business of the schools and may designate their duties. No person shall be appointed as a teacher or instructor in the schools who is not qualified to serve as a teacher or instructor in the schools under the laws of the state and the standards established by the department of education.

Source: L. 96: Entire article amended with relocations, p. 1626, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1113. Prior to relocation in 1996, the said section 19-2-1113 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The department of human services has considerable latitude to make assignments and transfers to effectuate its goals. Coupled with the state personnel system sections, the statutory scheme as a whole demonstrates that the legislature intended that the department have significant discretion in directing personnel to carry out its mission. Dept. of Human Servs. v. May, 1 P.3d 159 (Colo. 2000).

Corrections student need not complete final semester at district school. For a district school to require a department of corrections student to complete his final semester at a dis-

trict school in order to receive his diploma from that school is violative of this section. Department of Insts. ex rel. S.L.G. v. Bushnell, 195 Colo. 566, 579 P.2d 1168 (1978).

Academic work done at department of corrections facilities will be considered the equivalent of work in Colorado school districts. Department of Insts. ex rel. S.L.G. v. Bushnell, 195 Colo. 566, 579 P.2d 1168 (1978).

19-2-415. Fees for transporting juveniles. It is the duty of the sheriff, undersheriff, or deputy, or in their absence any suitable person appointed by the court for such purpose, to convey any juvenile committed under the provisions of section 19-2-601 or 19-2-907 to facilities of the division of youth corrections. All officers performing services under this part 4 shall be paid the same fees as are allowed for similar services in criminal cases, such fees to be paid by the county from which such juvenile was committed.

Source: L. 96: Entire article amended with relocations, p. 1626, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1114. Prior to relocation in 1996, the said section 19-2-1114 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-416. Administration or monitoring of medications to persons in juvenile institutional facilities. The executive director of the department of human services has the power to direct the administration or monitoring of medications to persons in juvenile institutional facilities as defined in section 25-1.5-301 (2) (b), C.R.S., in a manner consistent with part 3 of article 1.5 of title 25, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1626, § 1, effective January 1, 1997. **L. 2003:** Entire section amended, p. 705, § 26, effective July 1.

Editor's note: This section was formerly numbered as 19-2-1117.

19-2-417. Juvenile detention facilities - mental illness screening. (1) The executive director of the department of human services may implement a mental illness screening program to screen juveniles held in juvenile detention facilities following adjudication. If the executive director chooses to implement a mental illness screening program, the executive director shall use the standardized mental illness screening developed pursuant to section 16-11.9-102, C.R.S., and conduct the screening in accordance with procedures established pursuant to said section.

(2) Prior to implementation of a mental illness screening program pursuant to this section, if implementation of the program would require an increase in appropriations, the executive director shall submit to the joint budget committee a request for funding in the amount necessary to implement the mental illness screening program. If implementation of the mental illness screening program would require an increase in appropriations, implementation of the program shall be conditional upon approval of the funding request.

Source: L. 2002: Entire section added, p. 576, § 7, effective May 24.

19-2-418. Juveniles - medical benefits application assistance - county of residence - rules. (1) Beginning as soon as practicable, but no later than January 1, 2009, no later than one hundred twenty days prior to release, commitment facility personnel or state personnel shall assist the parent or legal guardian of the following juveniles in applying for medical assistance pursuant to part 1 or 2 of article 5 of title 25.5, C.R.S., or in applying to the children's basic health plan pursuant to section 25.5-8-109, C.R.S.:

(a) A juvenile who was receiving medical assistance pursuant to section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S., or pursuant to the children's basic health plan pursuant to

section 25.5-8-109, C.R.S., immediately prior to entering the juvenile commitment facility and is likely to be terminated from receiving medical assistance while committed or is reasonably expected to meet the eligibility criteria specified in section 25.5-5-101 (1) (f), 25.5-5-201 (1) (j), or 25.5-8-109, C.R.S., upon release; and

(b) A juvenile who is committed to a juvenile commitment facility.

(1.5) If a juvenile is committed or placed for less than one hundred twenty days, commitment facility personnel or state personnel shall make a reasonable effort to assist the parent or legal guardian of the juvenile in applying for medical assistance as soon as practicable.

(2) The department of health care policy and financing shall provide information and training on medical assistance eligibility requirements and assistance to the personnel at each commitment facility to assist in and expedite the application process for medical assistance for a juvenile held in custody who meets the requirements of paragraph (a) of subsection (1) of this section.

(3) (a) For purposes of determining eligibility pursuant to section 25.5-4-205, C.R.S., the county of residence of a juvenile shall be the county specified by the juvenile as his or her county of residence upon release.

(b) The executive director of the department of health care policy and financing shall promulgate rules to simplify the processing of applications for medical assistance pursuant to subsection (1) of this section and to allow a juvenile determined to be eligible for such medical assistance to access the medical assistance upon release and thereafter. If a county department of social services determines that a juvenile is eligible for medical assistance, the county shall enroll the juvenile in medical assistance or the children's basic health plan effective upon release of the juvenile. At the time of the juvenile's release, the commitment facility shall give the juvenile or the juvenile's parent or legal guardian information and paperwork necessary for the juvenile to access medical assistance. The information shall be provided to the commitment facility by the applicable county department of social services.

(c) Each juvenile commitment facility administrator shall attempt to enter into prerelease agreements, if appropriate, with the county department of social services, the department of human services, or the department of health care policy and financing in order to:

(I) Simplify the processing of applications for medical assistance or for the children's basic health plan benefits pursuant to section 25.5-8-109, C.R.S., to enroll, effective upon release, a juvenile who is eligible for medical assistance pursuant to section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S., or the children's basic health plan pursuant to section 25.5-8-109, C.R.S.; and

(II) Provide the juvenile or the juvenile's parent or legal guardian with the information and paperwork necessary to access medical assistance immediately upon release.

Source: L. 2008: Entire section added, p. 1763, § 1, effective June 2.

PART 5

ENTRY INTO SYSTEM

19-2-501. Short title. This part 5 shall be known and may be cited as "Juvenile Justice - Entry Into System". This part 5 consists of provisions concerning custody, evidence, detention, and commencement of proceedings.

Source: L. 96: Entire article amended with relocations, p. 1626, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-501 was relocated to section 19-2-107.

19-2-502. Taking juvenile into custody. (1) A juvenile may be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe that he or she has committed a delinquent act.

(2) A juvenile may be taken into temporary custody by a law enforcement officer executing a lawful warrant taking a juvenile into custody issued pursuant to section 19-2-503.

(3) A juvenile probation officer may take a juvenile into temporary custody:

(a) Under the circumstances stated in subsection (1) of this section; or

(b) If he or she has violated the conditions of probation and is under the continuing jurisdiction of the juvenile court.

(4) A juvenile may be detained temporarily by an adult other than a law enforcement officer if the juvenile has committed or is committing a delinquent act in the presence of such adult. Any person detaining a juvenile shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said juvenile.

(5) The taking of a juvenile into temporary custody under this section is not an arrest, nor does it constitute a police record.

Source: L. 96: Entire article amended with relocations, p. 1626, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-201. Prior to relocation in 1996, the said section 19-2-201 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-502 was relocated to section 19-2-108 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Phrase, "acts which if committed by an adult," was intended to define general type of conduct for which child might be taken into custody and for which he might be adjudicated delinquent. The phrase does not create limitation on power of state, but merely establishes general category of behavior for which children may be adjudicated delinquent. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Section 19-2-511 is applicable even when a juvenile lies to police about his age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

General assembly did not provide for an exception for juveniles who lie about their age to the police and claim to be adults. Nor is there a "good faith" exception for cases in which the police reasonably but mistakenly believe that their suspect is an adult. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

This interpretation is consistent with the way civil law protects juveniles from being bound by legal decisions they make even if they lie about their age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

Grounds for custody include violation of statute. Child may be taken into temporary custody if he violates statute or ordinance which makes specific behavior by children unlawful, even though such behavior if committed by adult is not unlawful. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Jurisdiction to order removal of life-sustaining devices. A juvenile court has jurisdiction in a shelter hearing to order the removal of all extraordinary life-sustaining devices from a child in the temporary custody of the department of social services if in the doctor's opinion the legal standard of cerebral death has been met. Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979).

Applied in People ex rel. Thompson v. Purcell, 70 Colo. 399, 201 P. 881(1921); People v. L.A., 199 Colo. 390, 609 P.2d 116 (1980); Griffin v. Pate, 644 P.2d 51 (Colo. App. 1981).

19-2-503. Issuance of a lawful warrant taking a juvenile into custody. (1) A lawful warrant taking a juvenile into custody may be issued pursuant to this section by any judge of a court of record or by a juvenile magistrate upon receipt of an affidavit relating facts sufficient to establish probable cause to believe that a delinquent act has been committed and probable cause to believe that a particular juvenile committed that act. Upon receipt of such affidavit, the judge or magistrate shall issue a lawful warrant commanding any peace officer to take the juvenile named in the affidavit into custody and to take him or her without unnecessary delay before the nearest judge of the juvenile court or magistrate

as provided in section 19-2-508 (4) (d).

(2) Upon filing of a petition in the juvenile court, the district attorney may request a warrant to issue that authorizes the taking of a juvenile into temporary custody. If a warrant is requested, the petition must be accompanied by a verified affidavit relating facts sufficient to establish probable cause that the juvenile has committed the delinquent act set forth in the petition.

(3) A warrant for the arrest of a juvenile for violation of the conditions of probation or of a bail bond may be issued by any judge of a court of record or juvenile magistrate upon the report of a juvenile probation officer or upon the verified complaint of any person, establishing to the satisfaction of the judge or juvenile magistrate probable cause to believe that a condition of probation or of a bail bond has been violated and that the arrest of the juvenile is reasonably necessary. The warrant may be executed by any juvenile probation officer or by a peace officer authorized to execute warrants in the county in which the juvenile is found.

Source: L. 96: Entire article amended with relocations, p. 1627, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-202. Prior to relocation in 1996, the said section 19-2-202 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-101.1 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-503 was relocated to section 19-2-805 when this article was amended with relocations in 1996.

19-2-503.5. Fingerprinting - juvenile under arrest - ordered by court. (1) For purposes of this section, "juvenile" means any juvenile who is charged with committing, summoned, or held in detention for committing a delinquent act that constitutes a felony, a class 1 misdemeanor, or a misdemeanor pursuant to section 42-4-1301, C.R.S., or a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., as if committed by an adult.

(2) Any juvenile detained pursuant to the provisions of this article shall be fingerprinted by the entity authorized by the court or the local law enforcement agency to obtain fingerprints, except for juvenile detention centers and alternative service programs, otherwise known as "SB 91-94 programs", described in section 19-2-302. Such entity or local agency shall forward a set of the juvenile's fingerprints to the Colorado bureau of investigation in the form and manner prescribed by the bureau.

(3) If a juvenile has not been fingerprinted prior to the first appearance of the juvenile before the court, the court shall order the juvenile to report to an entity authorized by the court or the local law enforcement agency for fingerprinting, except for juvenile detention centers and alternative service programs, otherwise known as "SB 91-94 programs", described in section 19-2-302. The authorized entity or local law enforcement agency shall endorse upon a copy of the order the completion of the fingerprinting and return the same to the court. The authorized entity or local law enforcement agency shall forward a set of fingerprints ordered pursuant to this subsection (3) to the Colorado bureau of investigation in the form and manner prescribed by the bureau.

(4) Any fingerprints required by this section to be forwarded to the Colorado bureau of investigation shall be forwarded within twenty-four hours after completion of the fingerprinting; except that such time period shall not include Saturdays, Sundays, and legal holidays.

Source: L. 2000: Entire section added, p. 653, § 1, effective May 19.

19-2-504. Search warrants - issuance - grounds. (1) A search warrant authorized by this section may be issued by any judge of a court of record or by a juvenile magistrate.

(2) A search warrant may be issued under this section to search for and seize any property:

(a) That is stolen or embezzled; or
(b) That is designed or intended for use as a means of committing a delinquent act; or
(c) That is or has been used as a means of committing a delinquent act; or
(d) The possession of which is illegal; or
(e) That would be material evidence in a subsequent criminal prosecution or delinquency adjudication in this state or in another state; or
(f) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or
(g) That is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health.

Source: L. 96: Entire article amended with relocations, p. 1628, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-206. Prior to relocation in 1996, the said section 19-2-206 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.
(2) The former section 19-2-504 was relocated to section 19-2-804 when this article was amended with relocations in 1996.

19-2-505. Search warrants - application. (1) A search warrant shall issue only on affidavit sworn to or affirmed before the judge or juvenile magistrate and relating facts sufficient to:
(a) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;
(b) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;
(c) Establish the grounds for issuance of the warrant or probable cause to believe that such grounds exist; and
(d) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.
(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.
(3) Procedures governing application for and issuance of search warrants consistent with this section may be established by rule of the supreme court.

Source: L. 96: Entire article amended with relocations, p. 1628, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-207. Prior to relocation in 1996, the said section 19-2-207 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.
(2) The former section 19-2-505 was relocated to section 19-2-802 when this article was amended with relocations in 1996.

19-2-506. Consent to search. In determining the voluntariness of a juvenile's consent to a search or seizure, the court shall consider the totality of the circumstances.

Source: L. 96: Entire article amended with relocations, p. 1629, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-208.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section and former § 19-2-209 (4) (now § 19-2-803 (4)) contain proper test to measure validity of consent to search given by juvenile in noncustodial setting. People in Interest of S.J., 778 P.2d 1384 (Colo. 1989); People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

19-2-507. Duty of officer - screening teams - notification - release or detention. (1) When a juvenile is taken into temporary custody and not released pending charges, the officer shall notify the screening team for the judicial district in which the juvenile is taken into custody. The screening team shall notify the juvenile's parent, guardian, or legal custodian without unnecessary delay and inform him or her that, if the juvenile is placed in detention or a temporary holding facility, all parties have a right to a prompt hearing to determine whether the juvenile is to be detained further. Such notification may be made to a person with whom the juvenile is residing if a parent, guardian, or legal custodian cannot be located. If the screening team is unable to make such notification, it may be made by any law enforcement officer, juvenile probation officer, detention center counselor, or common jailor in whose physical custody the juvenile is placed.

(2) The juvenile shall be detained if the law enforcement officer or the court determines that the juvenile's immediate welfare or the protection of the community require that the juvenile be detained. In determining whether a juvenile requires detention, the law enforcement officer or the court shall follow criteria for the detention of juvenile offenders which criteria are established in accordance with section 19-2-212.

(3) The juvenile shall be released to the care of such juvenile's parents or other responsible adult, unless a determination has been made in accordance with subsection (2) of this section that such juvenile's immediate welfare or the protection of the community requires that such juvenile be detained. The court may make reasonable orders as conditions of said release, which conditions may include participation in a preadjudication service program established pursuant to section 19-2-302. In addition, the court may provide that any violation of such orders shall subject the juvenile to contempt sanctions of the court. The parent or other person to whom the juvenile is released shall be required to sign a written promise, on forms supplied by the court, to bring the juvenile to the court at a time set or to be set by the court. Failure, without good cause, to comply with the promise shall subject the juvenile's parent or any other person to whom the juvenile is released to contempt sanctions of the court.

(4) (a) Except as provided in paragraph (b) of this subsection (4), a juvenile shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain basic identification information and to contact his or her parents, guardian, or legal custodian.

(b) If he or she is not released as provided in subsection (3) of this section, he or she shall be taken directly to the court or to the place of detention, a temporary holding facility, or a shelter designated by the court without unnecessary delay.

(5) As an alternative to taking a juvenile into temporary custody pursuant to subsections (1), (3), and (4) of this section, a law enforcement officer may, if authorized by the establishment of a policy that permits such service by order of the chief judge of the judicial district or the presiding judge of the Denver juvenile court, which policy is established after consultation between such judge and the district attorney and law enforcement officials in the judicial district, serve a written promise to appear for juvenile proceedings based on any act that would constitute a felony, misdemeanor, or petty offense upon the juvenile and the juvenile's parent, guardian, or legal custodian. Such promise to appear pursuant to this subsection (5) shall state any charges against the juvenile and the date, time, and place where such juvenile shall be required to answer such charges. The promise to appear shall be signed by the juvenile. The promise to appear shall be served upon the juvenile's parent, guardian, or legal custodian by personal service or by certified mail, return receipt requested. The date established for the juvenile and the juvenile's parent, guardian, or legal

custodian to appear shall not be earlier than seven days nor later than thirty days after the promise to appear is served upon both the juvenile and the juvenile's parent, guardian, or legal custodian.

Source: L. 96: Entire article amended with relocations, p. 1629, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-203. Prior to relocation in 1996, the said section 19-2-203 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Section provides for due process. The specific procedures in this section grant to juveniles all that is required under the due process clauses of the United States and the Colorado constitutions. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions. (1) A juvenile who must be taken from his or her home but who does not require physical restriction shall be given temporary care in a shelter facility designated by the court or the county department of social services and shall not be placed in detention.

(2) When a juvenile is placed in a detention facility, in a temporary holding facility, or in a shelter facility designated by the court, the screening team shall promptly so notify the court. The screening team shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the county, the person with whom the juvenile has been residing and inform him or her of the right to a prompt hearing to determine whether the juvenile is to be detained further. The court shall hold such detention hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays.

(3) (a) (I) A juvenile taken into custody pursuant to this article and placed in a detention or shelter facility or a temporary holding facility shall be entitled to a hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of such placement to determine if he or she should be detained. The time in which the hearing shall be held may be extended for a reasonable time by order of the court upon good cause shown.

(II) The primary purpose of a detention hearing shall be to determine if a juvenile should be detained further and to define conditions under which he or she may be released, if his or her release is appropriate. A detention hearing shall not be considered a preliminary hearing.

(III) With respect to this section, the court may further detain the juvenile if the court is satisfied from the information provided at the hearing that the juvenile is a danger to himself or herself or to the community. Any information having probative value shall be received regardless of its admissibility under the rules of evidence. In determining whether a juvenile requires detention, the court shall consider any record of any prior adjudications of the juvenile. There shall be a rebuttable presumption that a juvenile is a danger to himself or herself or to the community if:

(A) The juvenile is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S.; or

(B) The juvenile is alleged to have used, or possessed and threatened to use, a firearm during the commission of any felony offense against a person, as such offenses are described in article 3 of title 18, C.R.S.; or

(C) The juvenile is alleged to have committed possessing a dangerous or illegal weapon, as described in section 18-12-102, C.R.S.; possession of a defaced firearm, as described in section 18-12-103, C.R.S.; unlawfully carrying a concealed weapon, as described in section 18-12-105, C.R.S.; unlawfully carrying a concealed weapon on school,

college, or university grounds, as described in section 18-12-105.5, C.R.S.; prohibited use of weapons, as described in section 18-12-106, C.R.S.; illegal discharge of a firearm, as described in section 18-12-107.5, C.R.S.; or illegal possession of a handgun by a juvenile, as described in section 18-12-108.5, C.R.S.

(III.5) Notwithstanding the provisions of subparagraph (III) of this paragraph (a), there shall be no presumption under sub-subparagraph (C) of subparagraph (III) of this paragraph (a) that a juvenile is a danger to himself or herself or the community if the item in the possession of the juvenile is alleged to be a BB gun, a pellet gun, or a gas gun.

(IV) At the conclusion of the hearing, the court shall enter one of the following orders:

(A) That the juvenile be released to the custody of a parent, guardian, or legal custodian without the posting of bond;

(B) That the juvenile be placed in a shelter facility;

(C) That bail be set and that the juvenile be released upon the posting of that bail;

(D) That no bail be set and that the juvenile be detained without bail upon a finding that such juvenile is a danger to himself or herself or to the community. Any juvenile who is detained without bail must be tried on the charges in the petition filed pursuant to subparagraph (V) of this paragraph (a) within the time limits set forth in section 19-2-108, unless the juvenile is deemed to have waived the time limit for an adjudicatory trial pursuant to section 19-2-107 (4).

(E) That no bail be set and that, upon the court's finding that the juvenile is a danger to himself or herself or to the community, the juvenile be placed in a preadjudication service program established pursuant to section 19-2-302. This sub-subparagraph (E) shall not apply to any case in which the juvenile's alleged offense is one of the offenses described in subparagraph (III) of this paragraph (a).

(V) When the court orders further detention of the juvenile or placement of the juvenile in a preadjudication service program after a detention hearing, the district attorney shall file a petition alleging the juvenile to be a delinquent within seventy-two hours after the detention hearing, excluding Saturdays, Sundays, and legal holidays. The juvenile shall be held or shall participate in a preadjudication service program pending a hearing on the petition. Upon a showing of good cause, the court may extend such time for the filing of charges.

(VI) Following the detention hearing, if the court orders that the juvenile be released and, as a condition of such release, requires the juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of such requirement.

(VII) If the court orders further detention of a juvenile pursuant to the provisions of this section, said order shall contain specific findings as follows:

(A) Whether placement of the juvenile out of his or her home would be in the juvenile's and the community's best interests;

(B) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home, whether it is reasonable that such efforts not be provided due to the existence of an emergency situation that requires the immediate removal of the juvenile from the home, or whether such efforts not be required due to the circumstances described in section 19-1-115 (7); and

(C) Whether procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's placement in a community placement, or any determination affecting parental visitation of the juvenile.

(b) (I) If it appears that any juvenile being held in detention or shelter may be developmentally disabled, as provided in article 10.5 of title 27, C.R.S., the court or detention personnel shall refer the juvenile to the nearest community centered board for an eligibility determination. If it appears that any juvenile being held in a detention or shelter facility pursuant to the provisions of this article may have a mental illness, as provided in sections 27-65-105 and 27-65-106, C.R.S., the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health hospital placement prescreening on the juvenile. The court shall be notified of the contact and may take appropriate action. If a mental health hospital placement prescreening is requested, it shall be conducted in an appropriate place accessible to the juvenile and the mental health

professional. A request for a mental health hospital placement prescreening shall not extend the time within which a detention hearing shall be held pursuant to this section. If a detention hearing has been set but has not yet occurred, the mental health hospital placement prescreening shall be conducted prior to the hearing; except that the prescreening shall not extend the time within which a detention hearing shall be held.

(II) If a juvenile has been ordered detained pending an adjudication, disposition, or other court hearing and the juvenile subsequently appears to have a mental illness, as provided in section 27-65-105 or 27-65-106, C.R.S., the intake personnel or other appropriate personnel shall contact the court with a recommendation for a mental health hospital placement prescreening. A mental health hospital placement prescreening shall be conducted at any appropriate place accessible to the juvenile and the mental health professional within twenty-four hours of the request, excluding Saturdays, Sundays, and legal holidays.

(III) When the mental health professional finds, as a result of the prescreening, that the juvenile may have a mental illness, the mental health professional shall recommend to the court that the juvenile be evaluated pursuant to section 27-65-105 or 27-65-106, C.R.S.

(IV) Nothing in this paragraph (b) shall be construed to preclude the use of emergency procedures pursuant to section 27-65-105 (1), C.R.S.

(c) (I) A juvenile taken to a detention or shelter facility or a temporary holding facility pursuant to section 19-2-502 as the result of an allegedly delinquent act that constitutes any of the offenses described in subparagraph (III) of paragraph (a) of this subsection (3) shall not be released from such facility if a law enforcement agency has requested that a detention hearing be held to determine whether the juvenile's immediate welfare or the protection of the community requires that the juvenile be detained. A juvenile shall not thereafter be released from detention except after a hearing, reasonable advance notice of which has been given to the district attorney, alleging new circumstances concerning the further detention of the juvenile.

(II) Following a detention hearing held in accordance with subparagraph (I) of this paragraph (c), a juvenile who is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer shall not be held at any adult jail or pretrial facility unless the district court finds, after a hearing held pursuant to subparagraph (IV), (V), or (VI) of this paragraph (c), that an adult jail is the appropriate place of confinement for the juvenile.

(III) In determining whether an adult jail is the appropriate place of confinement for the juvenile, the district court shall consider the following factors:

(A) The age of the juvenile;

(B) Whether, in order to provide physical separation from adults, the juvenile would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities;

(C) The juvenile's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the juvenile caused by his or her placement in an adult jail, which risk may be evidenced by mental health or psychological assessments or screenings made available to the district attorney and to defense counsel;

(D) Whether detention in a juvenile facility will adequately serve the need for community protection pending the outcome of the criminal proceedings;

(E) Whether detention in a juvenile facility will negatively impact the functioning of the juvenile facility by compromising the goals of detention to maintain a safe, positive, and secure environment for all juveniles within the facility;

(F) The relative ability of the available adult and juvenile detention facilities to meet the needs of the juvenile, including the juvenile's need for mental health and educational services;

(G) Whether the juvenile presents an imminent risk of harm to himself or herself or others within a juvenile facility;

(H) The physical maturity of the juvenile; and

(I) Any other relevant factors.

(IV) After charges are filed directly in district court against a juvenile pursuant to section 19-2-517 or a juvenile is transferred to district court pursuant to section 19-2-518, the division of youth corrections may petition the district court to transport the juvenile to

an adult jail. The district court shall hold a hearing on the place of pretrial detention for the juvenile as soon as practicable, but no later than twenty days after the receipt of the division's petition to transport. The district attorney, sheriff, or juvenile may file a response to the petition and participate in the hearing. The juvenile shall remain in a juvenile detention facility pending hearing and decision by the district court.

(V) If a juvenile is placed in the division of youth corrections and is being tried in district court, the division of youth corrections may petition the court for a forthwith hearing to terminate juvenile detention placement if the juvenile's placement in a juvenile detention facility presents an imminent danger to the other juveniles or to staff at the detention facility. In making its determination, the court shall review the factors set forth in subparagraph (III) of this paragraph (c).

(VI) If the district court determines that an adult jail is the appropriate place of confinement for the juvenile, the juvenile may petition the court for a review hearing. The juvenile may not petition for a review hearing within thirty days after the initial confinement decision or within thirty days after any subsequent review hearing. Upon receipt of the petition, the court may set the matter for a hearing if the juvenile has alleged facts or circumstances that, if true, would warrant reconsideration of the juvenile's placement in an adult jail based upon the factors set forth in subparagraph (III) of this paragraph (c) and the factors previously relied upon by the court.

(3.5) Repealed.

(4) (a) No jail shall receive a juvenile for detention following a detention hearing pursuant to this section unless the juvenile has been ordered by the court to be held for criminal proceedings as an adult pursuant to a transfer or unless the juvenile is to be held for criminal proceedings as an adult pursuant to a direct filing. No juvenile under the age of fourteen and, except upon order of the court, no juvenile fourteen years of age or older shall be detained in a jail, lockup, or other place used for the confinement of adult offenders. The exception for detention in a jail shall be used only if the juvenile is being held for criminal proceedings as an adult pursuant to a direct filing or transfer.

(b) Whenever a juvenile is held pursuant to a direct filing or transfer in a facility where adults are held, the juvenile shall be physically segregated from the adult offenders.

(b.5) (I) When a juvenile who is to be held for criminal proceedings as an adult pursuant to a direct filing or transfer of charges, as provided in sections 19-2-517 and 19-2-518, respectively, is received at a jail or other facility for the detention of adult offenders, the official in charge of the jail or facility, or his or her designee, shall, as soon as practicable, contact the person designated pursuant to section 22-32-141, C.R.S., by the school district in which the jail or facility is located to request that the school district provide educational services for the juvenile for the period during which the juvenile is held at the jail or facility. The school district shall provide the educational services in accordance with the provisions of section 22-32-141, C.R.S. The official, in cooperation with the school district, shall provide an appropriate and safe environment to the extent practicable in which the juvenile may receive educational services.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b.5), if either the official in charge of the jail or facility or the school district determines that an appropriate and safe environment cannot be provided for a specific juvenile, the official and the school district shall be exempt from the requirement to provide educational services to the juvenile until such time as an environment that is determined to be appropriate and safe by both the official and the school district can be provided. If the school district will not be providing educational services to a juvenile because of the lack of an appropriate and safe environment, the official in charge of the jail or facility shall notify the juvenile, his or her parent or legal guardian, the juvenile's defense attorney, and the court having jurisdiction over the juvenile's case.

(III) The official in charge of the jail or facility for the detention of adult offenders, or his or her designee, in conjunction with each school district that provides educational services at the jail or facility, shall annually collect nonidentifying data concerning:

(A) The number of juveniles held at the jail or facility who are awaiting criminal proceedings as an adult pursuant to a direct filing or transfer of charges, as provided in sections 19-2-517 and 19-2-518, respectively, for the year;

(B) The length of stay of each of the juveniles in the jail or facility;

(C) The number of the juveniles in the jail or facility who received educational services pursuant to this paragraph (b.5);

(D) The number of days on which school districts provided educational services to the juveniles in the jail or facility and the number of hours for which school districts provided the educational services each day;

(E) The number of juveniles in the jail or facility who were exempt from receiving educational services pursuant to section 22-32-141 (2) (c), (2) (e), (2) (f), and (2) (g), C.R.S.;

(F) The number of juveniles in the jail or facility who had previously been determined pursuant to section 22-20-108, C.R.S., to be eligible for special education services and had an individualized education program; and

(G) The number of juveniles in the jail or facility who, while receiving educational services at the jail or facility, were determined pursuant to section 22-20-108, C.R.S., to be eligible for special education services and had subsequently received an individualized education program.

(IV) The official in charge of the jail or facility shall submit the information collected pursuant to subparagraph (III) of this paragraph (b.5) to the division of criminal justice in the department of public safety. The division of criminal justice shall make the information available to a member of the public upon request.

(c) The official in charge of a jail or other facility for the detention of adult offenders shall immediately inform the court that has jurisdiction of the juvenile's alleged offense when a juvenile who is or appears to be under eighteen years of age is received at the facility, except for a juvenile ordered by the court to be held for criminal proceedings as an adult.

(d) (I) Any juvenile arrested and detained for an alleged violation of any article of title 42, C.R.S., or for any alleged violation of a municipal or county ordinance, and not released on bond, shall be taken before a judge with jurisdiction of such violation within forty-eight hours for the fixing of bail and conditions of bond pursuant to subparagraph (IV) of paragraph (a) of subsection (3) of this section. A juvenile may be detained in a jail, lockup, or other place used for the confinement of adult offenders only for processing for no longer than six hours and during such time shall be placed in a setting that is physically segregated by sight and sound from the adult offenders, and in no case may the juvenile be detained in such place overnight. After six hours, the juvenile may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection (4), Saturdays, Sundays, and legal holidays shall be included.

(II) A sheriff or police chief who violates the provisions of subparagraph (I) of this paragraph (d) may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of subparagraph (I) of this paragraph (d) by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with subparagraph (I) of this paragraph (d).

(e) The official in charge of a jail, lockup, or other facility for the confinement of adult offenders that receives a juvenile for detention should, wherever possible, take such measures as are reasonably necessary to restrict the confinement of any such juvenile with known past or current affiliations or associations with any gang so as to prevent contact with other inmates at such jail, lockup, or other facility. The official should, wherever possible, also take such measures as are reasonably necessary to prevent recruitment of new gang members from among the general inmate population. For purposes of this paragraph (e), "gang" is defined in section 19-1-103 (52).

(f) Any person who is eighteen years of age or older who is being detained for a delinquent act or criminal charge over which the juvenile court has jurisdiction shall be detained in the county jail in the same manner as if such person is charged as an adult.

(g) A juvenile court shall not order a juvenile offender who is under eighteen years of age at the time of sentencing to enter a secure setting or secure section of an adult jail or

lockup as a disposition for an offense or as a means of modifying the juvenile offender's behavior.

(5) A juvenile has the right to bail as limited by the provisions of this section.

(6) The court may also issue temporary orders for legal custody as provided in section 19-1-115.

(7) Any law enforcement officer, employee of the division of youth corrections, or another person acting under the direction of the court who in good faith transports any juvenile, releases any juvenile from custody pursuant to a written policy of a court, releases any juvenile pursuant to any written criteria established pursuant to this title, or detains any juvenile pursuant to court order or written policy or criteria established pursuant to this title shall be immune from civil or criminal liability that might otherwise result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed.

(8) (a) A juvenile who allegedly commits a status offense or is convicted of a status offense shall not be held in a secure area of a jail or lockup.

(b) A sheriff or police chief who violates the provisions of paragraph (a) of this subsection (8) may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of paragraph (a) of this subsection (8) by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with paragraph (a) of this subsection (8).

Source: L. 96: Entire article amended with relocations, p. 1630, § 1, effective January 1, 1997. **L. 99:** (3)(a)(VII) added, p. 909, § 3, effective July 1. **L. 2001:** (3)(a)(VII) amended, p. 843, § 4, effective June 1. **L. 2002:** (3)(b) amended, p. 576, § 8, effective May 24; (3)(a)(III)(A) amended, p. 1524, § 226, effective October 1. **L. 2003:** (3)(a)(III.5) added, p. 1902, § 4, effective July 1. **L. 2005:** (3)(b)(III) amended, p. 1054, § 3, effective July 1. **L. 2006:** (4)(d) amended and (4)(g) and (8) added, pp. 256, 257, §§ 2, 3, effective March 31; (3)(b)(I), (3)(b)(II), and (3)(b)(III) amended, p. 1400, § 53, effective August 7. **L. 2007:** (3.5) added, p. 1107, § 1, effective August 3. **L. 2009:** (3)(c) amended, (HB 09-1321), ch. 351, p. 1833, § 1, effective June 1. **L. 2010:** (3)(b) amended, (SB 10-175), ch. 188, p. 789, § 38, effective April 29; (3)(c)(II)(F) amended and (4)(b.5) added, (SB 10-054), ch. 265, pp. 1215, 1212, §§ 7, 4, effective May 25. **L. 2012:** (3)(c) amended, (HB 12-1139), ch. 18, p. 49, § 1, effective March 15.

Editor's note: (1) This section was formerly numbered as 19-2-204. Prior to relocation in 1996, the said section 19-2-204 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3.5)(b) provided for the repeal of subsection (3.5), effective July 1, 2010. (See L. 2007, p. 1107.)

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (3)(a)(VII), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending subsection (3)(a)(VII), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2002 act amending subsection (3)(a)(III)(A), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section does not violate constitutional guarantees of due process to juveniles. Juveniles do not have an absolute constitutional right to bail and the presumption statute does not impermissibly shift the burden of proof from the state to the juvenile with respect to establishing whether secure detention is warranted. Instead, the statute merely requires the juvenile to introduce some evidence to overcome the presumption of dangerousness created by the statute. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Detention hearing required whether placement is in shelter or detention facility. The term "detention hearing", in the context of subsection (2), refers to a situation where a child is placed in a shelter facility as well as a situation

where a child is placed in a detention facility. In both situations the child is removed from the custody of the parents, and both the statute and due process require a prompt hearing to determine whether the welfare of the child or of the community require that the "detention" continue. P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974).

Hearing requirement is not jurisdictional. It would be contrary to the purposes of the Colorado Children's Code and possibly to the best interests of the children involved to hold that the hearing requirement of subsection (2) is jurisdictional. P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974).

Shelter hearing is a preadjudicatory stage of the case and is not intended to resolve the rights of natural parents to the legal custody of their child. S.L. v. Dist. Court, 676 P.2d 12 (Colo. 1984); W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

Shelter or detention hearing distinguished from a dependency or neglect adjudicatory hearing. W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

The applicable test for deciding whether to continue a child's shelter or "detention" at the preadjudication shelter hearing is whether temporary protective custody is necessary for protection of the child's welfare and best interest. W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

Subsection (1) is applicable only to juveniles who require physical restriction, it is not applicable to a juvenile who is detained because he has allegedly committed a felony offense and who does require physical restriction. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

"Order". Section 19-1-103 does not define "order" as that word is used in former subsection (6)(a) (now subsection (4)(a)). However, court order has been broadly defined in case law as any direction of a court not contained or included in a judgment. Hence, a directive issued by a juvenile court judge to a director of a juvenile detention center and warden of a county jail defining standards for placing a juvenile in the county jail was an order satisfying the requirements of former subsection (6)(a). C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

The evidence presented by a juvenile to overcome the presumption of dangerousness created by this section need not implicate constitutional protections against self-incrimination. Evidence that one does not constitute a danger to himself or others need not focus on the particular events giving rise to the person's detention. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

This section and the handgun statute (§ 18-12-108.5) were adopted to secure the safety of juveniles and the communities in which they reside. The Colorado Children's Code has consistently evidenced a legislative intent to accomplish both such purposes. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Detention of juveniles possessing deadly weapons prior to the conclusion of formal adjudicatory proceedings serves a legitimate state objective in view of the relationship between possession of a deadly weapon by a juvenile and the risk of imminent and serious harm to the community or the juvenile. Trial court's findings that confinement of juveniles in certain secure detention facilities constituted punishment did not resolve the issue of the facial validity of the statute creating a presumption of dangerousness. A court must consider the legislative purposes giving rise to the statute, the relationship between the statutory provisions and the purposes, and the procedures authorized by the statute. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Presumption statute does not violate fundamental fairness doctrine in light of the facts that the statute does not reflect a punitive legislative purpose, it limits the length of detention to a maximum of 67 days, and it establishes procedural safeguards. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Juvenile courts cannot delegate power to detain to executive branch. The Colorado Children's Code gives the juvenile courts the power to detain 14- and 15-year-old children in an adult detention facility, but the court cannot delegate its judicial power to the executive branch. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Juvenile court's directive not unconstitutional delegation of court's power. Juvenile court judge's directive that no child be detained in the county jail at the request of a policeman, deputy sheriff, state patrolman, or other peace officer or the district attorney, unless the child has been taken to the juvenile detention center and the staff had requested in writing both that the child be detained at the jail instead of the detention center and the reasons therefor was not an unconstitutional delegation of juvenile court's power. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Child does not have an absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. Dist. Court, 623 P.2d 1253 (Colo. 1981).

Court's discretion to detain subordinated to right to bail. The trial court has discretion under subsection (3) to detain a juvenile, but under former subsection (7) (now subsection

(5)) its discretion is subordinated to a juvenile's right to bail. L.O.W. v. Dist. Court, 623 P.2d 1253 (Colo. 1981).

And bail denied only where detention necessary to protect child or others. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. Dist. Court, 623 P.2d 1253 (Colo. 1981).

Court properly recalculated speedy trial period pursuant to § 19-2-509 to run from date that the juvenile entered a not guilty plea. Juvenile was originally held without bail. The juvenile was later committed to the department of youth corrections in another case. The court later vacated the no-bond hold and released the juvenile on the charges in this case. As the juvenile was not detained because of this case, the speedy trial provisions of subsection (3)(a)(IV)(D) did not apply. People ex rel. T.A., 91 P.3d 473 (Colo. App. 2004).

Applied in People v. Salazar, 189 Colo. 429, 541 P.2d 676 (1975); People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

19-2-509. Bail. (1) Unless the district attorney consents, no juvenile charged or accused of having committed a delinquent act that constitutes a felony or a class 1 misdemeanor shall be released without a bond or on a personal recognizance bond, if:

(a) The juvenile has been found guilty of a delinquent act constituting a felony or class 1 misdemeanor within one year prior to his or her detention;

(b) The juvenile is currently at liberty on another bond of any type; or

(c) The juvenile has a delinquency petition alleging a felony pending in any district or juvenile court for which probable cause has been established.

(2) In lieu of a bond, a juvenile who the court determines is a danger to himself or herself or to the community may be placed in a preadjudication service program established pursuant to section 19-2-302.

(3) Any application for the revocation or modification of the amount, type, or conditions of bail shall be made in accordance with section 16-4-107, C.R.S.; except that the presumption described in section 19-2-508 (3) (a) (III) shall continue to apply for the purposes of this section.

(4) (a) In determining the amount of bail and the type of bond to be furnished by the juvenile, the judge or magistrate fixing the same shall consider the criteria set forth in section 16-4-105 (1), C.R.S.

(b) In setting, modifying, or continuing any bail bond, it shall be a condition that the released juvenile appear at any place and upon any date to which the proceeding is transferred or continued. Further conditions of every bail bond shall be that the released juvenile not commit any delinquent acts or harass, intimidate, or threaten any potential witnesses. The judge or magistrate may set any other conditions or limitations on the release of the juvenile as are reasonably necessary for the protection of the juvenile and the community. Any juvenile who is held without bail or whose bail or bail bond is revoked or increased under an order entered at any time after the initial detention hearing pursuant to subsection (3) of this section and who remains in custody or detention, must be tried on the charges on which the bail is denied or the bail or bail bond is revoked or increased within sixty days after the entry of such order or within sixty days after the juvenile's entry of a plea, whichever date is earlier; except that, if the juvenile requests a jury trial pursuant to section 19-2-107, the provisions of section 19-2-107 (4) shall apply.

(5) A surety or security on a bail bond may be subject to forfeiture only if the juvenile fails to appear for any scheduled court proceedings, of which the juvenile received proper notice.

(6) The court may order that any personal recognizance bond be secured by the personal obligation of the juvenile and his or her parents, guardian, legal custodian, or other responsible adult.

(7) The parent, guardian, or legal custodian for any juvenile released on bond pursuant to this section or any other responsible adult who secures a personal recognizance bond for a juvenile pursuant to subsection (6) of this section may petition the court, prior to forfeiture or exoneration of the bond, to revoke the bond and remand the juvenile into custody if the parent, guardian, legal custodian, or other responsible adult determines that he or she is

unable to control the juvenile. The court shall apply the presumption specified in section 19-2-508 (3) (a) (III) in determining whether to revoke the bond.

(8) A juvenile may be released on bond or as otherwise provided in this section regardless of whether the juvenile appears in court pursuant to a summons or a warrant.

Source: L. 96: Entire article amended with relocations, p. 1634, § 1, effective January 1, 1997. **L. 99:** (7) and (8) added, pp. 1373, 1374, §§ 6, 8, effective July 1. **L. 2001:** (4)(b) amended, p. 137, § 2, effective July 1.

Editor's note: This section was formerly numbered as 19-2-205. Prior to relocation in 1996, the said section 19-2-205 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Child does not have an absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

Court's discretion to detain subordinated to right to bail. The trial court has discretion under subsection (3) to detain a juvenile, but under former subsection (7) (now subsection (5)) its discretion is subordinated to a juvenile's right to bail. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

And bail denied only where detention necessary to protect child or others. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

Court properly recalculated speedy trial period pursuant to this section to run from date that the juvenile entered a not guilty plea. Juvenile was originally held without bail. The juvenile was later committed to the department of youth corrections in another case. The court later vacated the no-bond hold and released the juvenile on the charges in this case. As the juvenile was not detained because of this case, the speedy trial provisions of § 19-2-508 (3)(a)(IV)(D) did not apply. People ex rel. T.A., 91 P.3d 473 (Colo. App. 2004).

19-2-510. Preliminary investigation. (1) Whenever it appears to a law enforcement officer or any other person that a juvenile is or appears to be within the court's jurisdiction, as provided in section 19-2-104, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the district attorney, who shall determine whether the interests of the juvenile or of the community require that further action be taken.

(2) Upon the request of the district attorney, the matter may be referred to any agency for an investigation and recommendation.

Source: L. 96: Entire article amended with relocations, p. 1635, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-301. Prior to relocation in 1996, the said section 19-2-301 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-511. Statements. (1) No statements or admissions of a juvenile made as a result of the custodial interrogation of such juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile shall be admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and the juvenile and his or her parent,

guardian, or legal or physical custodian were advised of the juvenile's right to remain silent and that any statements made may be used against him or her in a court of law, of his or her right to the presence of an attorney during such interrogation, and of his or her right to have counsel appointed if he or she so requests at the time of the interrogation; except that, if a public defender or counsel representing the juvenile is present at such interrogation, such statements or admissions may be admissible in evidence even though the juvenile's parent, guardian, or legal or physical custodian was not present.

(2) (a) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile may be admissible in evidence, notwithstanding the absence of a parent, guardian, or legal or physical custodian, if the court finds that, under the totality of the circumstances, the juvenile made a knowing, intelligent, and voluntary waiver of rights and:

(I) The juvenile is eighteen years of age or older at the time of the interrogation or the juvenile misrepresents his or her age as being eighteen years of age or older and the law enforcement official acts in good faith reliance on such misrepresentation in conducting the interrogation;

(II) The juvenile is emancipated from the parent, guardian, or legal or physical custodian; or

(III) The juvenile is a runaway from a state other than Colorado and is of sufficient age and understanding.

(b) For the purposes of this subsection (2), "emancipated juvenile" is defined in section 19-1-103 (45).

(3) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the juvenile was accompanied by a responsible adult who was a custodian of the juvenile or assuming the role of a parent at the time.

(4) For the purposes of this section, "physical custodian" is defined in section 19-1-103 (84).

(5) Notwithstanding the provisions of subsection (1) of this section, the juvenile and his or her parent, guardian, or legal or physical custodian may expressly waive the requirement that the parent, guardian, or legal or physical custodian be present during interrogation of the juvenile. This express waiver shall be in writing and shall be obtained only after full advisement of the juvenile and his or her parent, guardian, or legal or physical custodian of the juvenile's rights prior to the taking of the custodial statement by a law enforcement official. If said requirement is expressly waived, statements or admissions of the juvenile shall not be inadmissible in evidence by reason of the absence of the juvenile's parent, guardian, or legal or physical custodian during interrogation. Notwithstanding the provisions of this subsection (5), a county social services department and the department of human services, as legal or physical custodian, may not waive said requirement.

(6) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile shall not be inadmissible into evidence by reason of the absence of a parent, guardian, or legal or physical custodian, if the juvenile makes any deliberate misrepresentations affecting the applicability or requirements of this section and a law enforcement official, acting in good faith and in reasonable reliance on such deliberate misrepresentation, conducts a custodial interrogation of the juvenile that does not comply with the requirements of subsection (1) of this section.

Source: L. 96: Entire article amended with relocations, p. 1635, § 1, effective January 1, 1997. **L. 99:** (2) amended, p. 1374, § 10, effective July 1; (6) added, p. 1017, § 1, effective August 4.

Editor's note: This section was formerly numbered as 19-2-210. Prior to relocation in 1996, the said section 19-2-210 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Confessions and the Juvenile Offender", see 11 Colo. Law. 96 (1982). For comment, "Fourth Amendment Protection in the School Environment: The Colorado Supreme Court's Application of the Reasonable Suspicion Standard in State v. P.E.A.", 61 U. Colo. L. Rev. 153 (1990). For article, "Family Law and Juvenile Delinquency", see 37 Colo. Law. 61 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Constitutional source of rights. Rights set out in this section of the Colorado Children's Code find genesis in the fifth amendment privilege against self-incrimination and in the sixth amendment right to counsel. People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

Section does not diminish fifth amendment protections but instead provides for additional protection. People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).

Section provides for due process. The specific procedures in this section grant to juveniles all that is required under the due process clauses of the United States and the Colorado constitutions. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Subsection (2)(a)(III) does not confer a fundamental right to a runaway from another state when he or she is of sufficient age and understanding and has waived his or her right to remain silent or to have an attorney present. People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).

The clear purpose in enacting former subsection (3)(c)(I) (now subsection (1)) is to afford a special protection to a juvenile who is in police custody because of alleged criminal acts. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977); People in Interest of R.L.N., 43 Colo. App. 542, 605 P.2d 491 (1980).

Former subsection (3)(c)(I) (now subsection (1)) of this section provides an additional and necessary assurance that the juvenile's fifth amendment right against self-incrimination and his sixth amendment right to counsel will be fully afforded to him. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977); People v. Lee, 630 P.2d 583 (Colo. 1981), cert. denied, 454 U.S. 1162, 102 S. Ct. 1036, 71 L. Ed. 2d 318 (1982).

Former subsection (3)(c)(I) (now subsection (1)) was enacted to safeguard the privilege against self-incrimination, the same privilege protected by Miranda, and the "fruit of the poisonous tree" doctrine on the inadmissibility of evidence obtained by unconstitutional police action applies to its violation. People v. Saiz, 620 P.2d 15 (Colo. 1980).

The purpose of former subsection (3)(c)(I) (now subsection (1)) is to provide a child with parental guidance during police interrogation and to ensure that any waiver of the child's fifth amendment right against self-incrimination and sixth amendment right to counsel will be made knowingly and intelligently. People in Interest of G.L., 631 P.2d 1118 (Colo. 1981).

Legislative purpose of subsection (1), barring admission of statements made during police interrogation of minor unless minor's parents, guardian, legal custodian, or attorney are present, is to provide minor with an opportunity to consult with such person before deciding whether to assert or waive fifth amendment rights. People v. Raibon, 843 P.2d 46 (Colo. App. 1992).

Factual findings as to "custody" and "interrogation" are necessary predicates to any application of this section. Where magistrate failed to make findings on question of whether juvenile was in custody and being interrogated, matter was remanded to the district court for development of further evidence. People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

Protection afforded statements and admissions of child applies to searches. The same test is applicable to the validity of the search whether the consenting party is an adult or a juvenile with the one exception noted in former subsection (3) (now subsection (1)) of this section. That is, a parent, guardian, or legal custodian of the child must be present and freely and intelligently give his consent. Although this subsection (3) refers specifically to "statements and admissions", and requires that the interrogating officer afford both the juvenile and his parent, guardian, or legal custodian full fifth amendment protection, the juvenile is entitled to comparable protection in connection with the waiver of his fourth amendment rights. People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971).

Search properly conducted in accordance with safeguards arising out of fourth amendment to constitution of United States is not inconsistent with this section. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Defendant's consent to search was voluntary and not the result of coercion. Defendant's parents provided guidance and advice before, during, and after the interrogation. The parents' position that they approved of DNA testing was consistent throughout. There is no requirement that the defendant's parents be present during the sample collection. People v. Lehmkuhl, 117 P.3d 98 (Colo. App. 2004).

The language, "acts which if committed by an adult", which appears almost verbatim in former subsection (3)(c)(I) (now subsection (1)), was intended to define, by analogy, a general type of conduct for which a child might be taken into custody and for which he might be

adjudicated a delinquent. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The words "at the time of the interrogation" refer to the request for appointment of counsel and do not refer to all the rights listed. People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

Department of institutions not "legal custodian". The department of institutions, into whose control an adjudicated delinquent has been placed, is not a "legal custodian" for the purposes of former subsection (3)(c)(I) (now subsection (1)). People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

This section is to be strictly construed. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

Former subsection (1) (now § 19-2-507) dovetails with requirement of former subsection (3)(c)(I) (now subsection (1)). Former subsection (1) (now § 19-2-507), requiring prompt notification to the parent, guardian, or legal custodian of a child taken into temporary custody, dovetails with the requirement of former subsection (3)(c)(I) (now subsection (1)) that a parent, guardian, or legal custodian be present during interrogation. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The warnings incorporated in a Miranda advisement have been codified in the juvenile context by this section, together with the requirement that the juvenile be accompanied by a parent, guardian, or custodian during the advisement and interrogation. People v. T.C., 898 P.2d 20 (Colo. 1995).

The standard of review for determining custody for this section's purpose is the same standard for determining custody in Miranda cases. People v. Howard, 92 P.3d 445 (Colo. 2004).

In determining whether a juvenile is in custody for purposes of this section, a court must consider whether a reasonable person in the juvenile's position would consider himself or herself significantly deprived of his or her liberty. In deciding whether a reasonable person would believe himself or herself to be deprived of his or her freedom of action, the court must consider the totality of circumstances. The factors the court should consider are: The time, place, and purpose of the encounter; the persons present during the interrogation; the words spoken by the officer to the defendant; the officer's tone of voice and general demeanor; the length and mood of the interrogation; whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation; the officer's response to any questions asked by the defendant; whether directions were given to the defendant during the interrogation; and the defendant's verbal or nonverbal response to such directions. People v. Howard, 92 P.3d 445 (Colo. 2004).

A police officer's subjective view that the individual under question is a suspect, if undisclosed, has no bearing on whether the suspect is in custody. People v. Howard, 92 P.3d 445 (Colo. 2004).

Not in custody for Miranda purposes. People v. Howard, 92 P.3d 445 (Colo. 2004).

This section does not require, in every case, a repetitive advisement of rights immediately before any statement is taken. People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

Parent not required to be present when juvenile makes voluntary statements to police after police ended interrogation with parent because of request for counsel. People v. Rivas, 13 P.3d 315 (Colo. 2000).

Limitations of former subsection (3)(c)(I) (now subsection (1)). Former subsection (3)(c)(I) (now subsection (1)) does not require that a juvenile be warned that his statements "will" be used against him or that a juvenile be advised that he has the right to terminate the questioning at any time. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

Factors in determining voluntariness of confession. In determining whether a juvenile's confession is voluntary, the primary factors to be considered are the juvenile's age, experience, background, and intelligence, his capacity to understand the warnings given him, the nature of his fifth amendment rights, and the consequences of waiving those rights. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

And prosecution to prove voluntariness by preponderance. Once the issue of voluntariness has been raised, the prosecution has the burden of establishing by a preponderance of the evidence that the statements were made voluntarily. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

Confession obtained during custodial interrogation properly determined voluntary despite fact that waiver of parental attendance was not in writing. The juvenile and his parents waived their right to consult with an attorney and orally waived their right to parental attendance at the interrogation, and the interviewing detective's "soft technique", if any, did not constitute improper coercion. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd, 48 P.3d 543 (Colo. 2002).

The remedy for a violation of this section is suppression of the statements obtained. However, that remedy applies only to statements made as a result of custodial interrogation. People v. T.C., 898 P.2d 20 (Colo. 1995).

Section is applicable even when a juvenile lies to police about his age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

General assembly did not provide for an exception for juveniles who lie about their age to the police and claim to be adults. Nor is there a "good faith" exception for cases in which the

police reasonably but mistakenly believe that their suspect is an adult. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

This interpretation is consistent with the way civil law protects juveniles from being bound by legal decisions they make even if they lie about their age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

Admissibility governed by circumstances surrounding interrogation. Whether statements obtained during custodial interrogation are admissible depends upon the totality of the circumstances surrounding the interrogation. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

Interrogation conducted via telephone not custodial since police officer could not exercise immediate control over juvenile. Juvenile not entitled to protection of subsection (1). People in Interest of J.C., 844 P.2d 1185 (Colo. 1993).

Statements inadmissible unless special protection provided. Statements and admissions made to the police by a juvenile in the course of a criminal investigation are not admissible in evidence against a juvenile unless the special protection contemplated by former subsection (3)(c)(I) (now subsection (1)) of this section is provided. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977).

And simply reciting required warnings does not sever illegal connection. Simply reciting the warnings required by this section does not sever the connection between illegal questioning and subsequently incriminating statements. People v. Saiz, 620 P.2d 15 (Colo. 1980).

If the adult appearing with the juvenile has interests that are objectively hostile to those of the juvenile and cannot aid the juvenile in making a knowing, intelligent, and voluntary waiver of his or her constitutional rights, the juvenile is deprived of the protections of this section. People v. Legler, 969 P.2d 691 (Colo. 1998).

Child's confession, obtained without compliance with this section, was inadmissible, and the court should have granted the child's motion to suppress the confession. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

Minor's statements suppressed when gained through police urgings following his expressed desire to stop interrogation. Where a minor defendant responded to one of the officer's questions by stating, "I ain't going to say nothing no more", but the officers continued to urge defendant to tell the truth, a statement gained by those urgings was suppressed. People v. Saiz, 42 Colo. App. 469, 600 P.2d 97 (1979).

Where the police were actively involved in the continued urging of minor defendant "to tell the truth", the fact that the defendant's parents made similar requests did not absolve the police of any wrongdoing, or allow them to disregard defendant's exercise of his right to cut off questioning. People v. Saiz, 42 Colo. App. 469, 600 P.2d 97 (1979).

Tainted fruit doctrine does not require the automatic suppression of later statements made by the defendant or by witnesses whose identity was derived from the defendant's initial, unwarned statement. Although the lack of a Miranda warning creates a presumption of compulsion, the presumption can be rebutted and the initial statement shown to be voluntary in light of the totality of the circumstances. People v. T.C., 898 P.2d 20 (Colo. 1995).

Thus, fruits doctrine does not require suppression of properly obtained second confession where, although first confession was suppressed for lack of the written parental attendance waiver required under subsection (5), first confession nevertheless was voluntary. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd on other grounds, 48 P.3d 543 (Colo. 2002).

Physical evidence which is fruit of statement improperly obtained from juvenile is inadmissible. People v. Saiz, 42 Colo. App. 469, 600 P.2d 97 (1979).

It is implicit that a child involved in the commission of an offense should be afforded protective counseling concerning his legal rights from one whose interests are not adverse to those of the child, to the end that any statements made by the child be given voluntarily, knowingly, and intelligently. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976); People v. Legler, 969 P.2d 691 (Colo. 1998).

Counselors of a school for boys cannot be considered the neutral counselors contemplated by former subsection (3)(c)(I) (now subsection (1)). People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Purpose of parental presence at interrogation. The statutory requirement of the presence of a parent or guardian at the interrogation of a child by law enforcement officers is designed to provide parental guidance and assistance to the child and thereby to provide at least some minimal assurance that a child's waiver of his right against self-incrimination is knowingly and intelligently made. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

Subsection (5) requires police to advise a juvenile of the right to have a parent present during custodial interrogation and acquire an express waiver of that right from the juvenile prior to conducting an interrogation of the juvenile without the presence of a parent. People v. Barrow, 139 P.3d 636 (Colo. 2006).

The "full advisement" requirement of subsection (5) is not satisfied by merely showing the minor defendant a form signed by his parent indicating that she granted permission for the interview to proceed outside her presence. People v. Barrow, 139 P.3d 636 (Colo. 2006).

Subsection (5) requires that a waiver of the right to parental attendance must be express, in writing, and obtained after a Miranda advisement; however, it does not require that the writing be signed. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd, 48 P.3d 543 (Colo. 2002).

Although subsection (5) does not require a signature on the written waiver of parental attendance, the written waiver must in some manner be attributable to the person against whom it is to be enforced. A signature on the document obviously is the most direct means to demonstrate this, but it is not the only way for one to acknowledge or ratify the document. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd, 48 P.3d 543 (Colo. 2002).

But where parent is himself incarcerated, his ability to guide and advise the child is hobbled and restrained by his own circumstances to such an extent that his mere physical presence does not satisfy the requirements of this section concerning confessions of a child. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

A child's confession is inadmissible where the child receives inadequate guidance because the parent is present but also incarcerated, or where a counselor or caseworker is substituted for the parent. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

Because parent must be in position to freely advise. To effectively provide the guidance and advice contemplated by this section, the parent must be in a position to give advice freely, and a parent who is himself incarcerated is in no such position. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

Where interest of parents is obviously adverse to interests of minor, they are disqualified to act under the provisions of this section. People in Interest of P.L.V., 176 Colo. 342, 490 P.2d 685 (1971); People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

The fact that the father was upset with his son's possible involvement in a crime does not mean that their interests were necessarily adverse. People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

A pending investigation against a parent does not create a per se rule that the parent's interests are hostile or adverse to those of a child who comes under police investigation. People v. White, 64 P.3d 864 (Colo. App. 2002).

Out-of-state runaways are not afforded the protections of this section. Statements from a juvenile who is a runaway from another state are admissible if the juvenile is of sufficient age and understanding. Sufficient age and understanding refers to the juvenile's ability to understand his or her constitutional rights and to make a knowing, intelligent, and voluntary waiver. People v. Blankenship, 30 P.3d 698 (Colo. App. 2000).

There is a rational basis under subsection (2) for distinguishing between out-of-state runaways and in-state runaways. Parents of in-state runaways presumably live in state and can be contacted more easily and be present for an interrogation with less difficulty. People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).

Runaway is defined as an unmarried person under the age of 18 and who ran away from home or is otherwise beyond parental control. People v. Blankenship, 30 P.3d 698 (Colo. App. 2000).

Counsel appointed if person appearing with juvenile is neutral or hostile. The only effective means of implementing the purposes of this statute in situations where person appearing with juvenile is neutral or hostile to the juvenile's interests is to appoint counsel. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977).

Former subsection (3)(c)(I) (now subsection (1)) provides for the presence of an attorney, or the public defender, at the interrogation. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Appointed counsel must be present at confession. Appointment of counsel does not alleviate the necessity for compliance with this section where counsel was not present at the time of the confession. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

But right to counsel held waived. Child's execution of financial eligibility form and interview by member of public defender's office did not constitute an unambiguous invocation of the right to counsel. Under totality of the circumstances, statement by juvenile's mother to police concerning public defender representation simply indicated mother's concern over legal representation in light of financial circumstances, and was not a clear assertion of right to counsel. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd on other grounds, 48 P.3d 543 (Colo. 2002).

Guardian ad litem appointed for custody purposes may be representative for juvenile's interests in criminal interrogation. Attorney guardian ad litem who was familiar with the juvenile and his familial and criminal background was qualified to appropriately serve the interests of the juvenile. Fact that the guardian was originally appointed to represent juvenile in custodial proceeding was not dispositive of whether guardian could also adequately represent juvenile defendant during custodial interrogation. People v. S.M.D., 864 P.2d 1103 (Colo. 1994).

Trial court properly found that juvenile was emancipated, therefore absence of the juvenile's parent at custodial interrogation did not require the court to suppress the juvenile's statement. The trial court appropriately found that the juvenile was emancipated where the juvenile had been on his own for three

months and had not been receiving financial support from his mother. People v. Lucas, 992 P.2d 619 (Colo. App. 1999).

Trial court properly held that juvenile was emancipated even though legal and physical custody of the juvenile had been placed with the department of human services. The language of this section implicitly recognizes that a juvenile may be emancipated from the custody of someone other than the parent, including the state. People v. Lucas, 992 P.2d 619 (Colo. App. 1999).

Application of former subsection (3)(c)(I) (now subsection (1)). Read in context, the limitations of former subsection (3)(c)(I) (now subsection (1)) apply only when a child is in temporary custody or under detention, as those terms are used in the Colorado Children's Code. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977); People v. L.A., 199 Colo. 390, 609 P.2d 116 (Colo. 1980); People in Interest of G.L., 631 P.2d 1118 (Colo. 1981).

Although not expressly so limited, it is clear that former subsection (3)(c)(I) (now subsection (1)) concerns questioning of a child while in temporary custody or under detention. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The requirements of former subsection (3)(c)(I) (now subsection (1)) do not apply to interrogation of a child by a law enforcement official concerning traffic offenses which could not result in the child's being adjudicated a delinquent. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The exclusionary rule of former subsection (3)(c)(I) (now subsection (1)) does not apply to a child's statement made to a treating physician when that statement is not the result of an interrogation by a law enforcement official. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

Under Miranda and former subsection (3)(c)(I) (now subsection (1)), the decisive stage for the warnings is custodial interrogation, i.e., questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. People v. Lee, 630 P.2d 583 (Colo. 1981), cert. denied, 454 U.S. 1162, 102 S. Ct. 1036, 71 L. Ed. 2d 318 (1982).

Subsection (1) applies only to consent searches and not to searches incident to a lawful arrest. People in Interest of S.J.F., 736 P.2d 29 (Colo. 1987).

Subsection (1) is inapplicable to a search consented to by a minor in a noncustodial setting. People in Interest of S.J., 778 P.2d 1384 (Colo. 1989).

Subsection (1) does not require that parents, irrespective of the rules of evidence, be permitted to testify concerning all statements made by their child during an interrogation at which they were present. People v. Raibon, 843 P.2d 46 (Colo. App. 1992).

Physical custodians under subsection (1) must be limited to the adult or adults with whom the child resided immediately prior to the arrest and custodial interrogation. If an adult is functioning as a current physical custodian for the child at the time of the interrogation, a protective relationship sufficient to satisfy the legislative purposes presumptively exists. People v. Legler, 969 P.2d 691 (Colo. 1998).

Principal and security officer did not act as agents of the police. Whether or not an individual conducting a search is an agent of the police and thus "a law enforcement official" under subsection (1) is determined by the totality of the circumstances. The fact that the police officer supplied information to the school principal with the intent of initiating a search and that he was present on school premises during the investigation do not support a finding that the principal and security officer acted as agent of "a law enforcement official". People in Interest of P.E.A., 754 P.2d 382 (Colo. 1988); People in Interest of F.M., 754 P.2d 390 (Colo. 1988).

This section does not apply to admission of paternity by minor. People in Interest of R.L.N., 43 Colo. App. 542, 605 P.2d 491 (1980).

Applied in People v. Salazar, 189 Colo. 429, 541 P.2d 676 (1975); D.W. v. Dist. Court, 193 Colo. 194, 564 P.2d 949 (1976); People v. Cunningham, 194 Colo. 228, 570 P.2d 1086 (1977); People v. L.A., 199 Colo. 390, 609 P.2d 116 (1980); People v. Trujillo, 624 P.2d 924 (Colo. App. 1980).

19-2-512. Petition initiation. (1) If the district attorney determines that the interests of the juvenile or of the community require that further action be taken, the district attorney may file a petition in delinquency on the form specified in section 19-2-513, which shall be accepted by the court. If the district attorney chooses to file a petition in delinquency on any juvenile who receives a detention hearing under section 19-2-508, he or she shall file said petition within seventy-two hours after the detention hearing, excluding Saturdays, Sundays, and legal holidays. Upon filing of such petition, the court, if practicable, shall send notice of the pendency of such action to the natural parents of the juvenile who is the subject of such petition.

(2) If the petition is the first juvenile petition filed against the juvenile in any jurisdiction and is initiated in a jurisdiction that has restorative justice practices available, the district attorney or his or her designee may determine whether a juvenile is suitable for restorative justice practices. In making a determination of whether the juvenile is suitable

for restorative justice practices, the district attorney shall first determine whether the victim, having been informed about restorative justice practices pursuant to section 24-4.1-303 (11) (g), C.R.S., is requesting consideration of restorative justice practices as an alternative to formal prosecution. Upon such request, the district attorney shall consider whether the juvenile accepts responsibility for, expresses remorse for, and is willing to repair the harm caused by his or her actions and whether the juvenile's parent or legal guardian is willing to support the juvenile in the process. If requested by the victim, restorative justice practices may be utilized as part of this process. The district attorney may offer dismissal of charges as an option for the successful completion of these and any other conditions imposed and designed to address the harm done to the victim and the community by the offender, subject to approval by the court.

Source: L. 96: Entire article amended with relocations, p. 1637, § 1, effective January 1, 1997. **L. 2011:** Entire section amended, (HB 11-1032), ch. 296, p. 1405, § 11, effective August 10.

Editor's note: This section was formerly numbered as 19-2-304. Prior to relocation in 1996, the said section 19-2-304 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Petition to inform of nature and cause of accusation. A petition in delinquency is sufficient if it advises the juvenile of the nature and cause of the accusation against him, so that he can adequately defend himself. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

Petition in delinquency need not specify lesser included offenses which may have been committed in commission of the described act. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

19-2-513. Petition form and content. (1) The petition and all subsequent court documents in any proceedings brought under section 19-1-104 (1) (a) or (1) (b) shall be entitled "The People of the State of Colorado, in the Interest of ....., a juvenile (or juveniles) and Concerning ....., Respondent." The petition may be filed using the language of the statutes defining the offense, including either conjunctive or disjunctive clauses. Pleading in either the conjunctive or the disjunctive shall place a respondent on notice that the prosecution may rely on any or all of the alternatives alleged.

(2) The petition shall set forth plainly the facts that bring the juvenile within the court's jurisdiction. If the petition alleges that the juvenile is delinquent, it shall cite the law or municipal or county ordinance that the juvenile is alleged to have violated. The petition shall also state the name, age, and residence of the juvenile and the names and residences of his or her parents, guardian, or other legal custodian or of his or her nearest known relative if no parent, guardian, or other legal custodian is known.

(3) (a) Pursuant to the provisions of section 19-1-126, in those delinquency proceedings to which the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq., applies, including but not limited to status offenses such as the illegal possession or consumption of ethyl alcohol by an underage person, as described in section 18-13-122, C.R.S., purchase or attempted purchase of cigarettes or tobacco products by a person under eighteen years of age, as described in section 18-13-121, C.R.S., and possession of handguns by juveniles, as described in section 18-12-108.5, C.R.S., the petition shall:

(I) Include a statement indicating what continuing inquiries the district attorney or the district attorney's representative has made in determining whether the juvenile is an Indian child;

(II) Identify whether the juvenile is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts shall be attached to the petition and filed with the court or filed within ten days after the filing of the petition, as specified in section 19-1-126 (1) (c).

Source: L. 96: Entire article amended with relocations, p. 1637, § 1, effective January 1, 1997. **L. 2002:** (3) added, p. 785, § 4, effective May 30. **L. 2003:** (1) amended, p. 973, § 3, effective April 17.

Editor's note: This section was formerly numbered as 19-2-305. Prior to relocation in 1996, the said section 19-2-305 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (3), see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (November 2002).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Incorrect statutory citation not fatal. The incorrect citation of a specific statutory reference in a petition in delinquency is not grounds for reversal, absent substantial prejudice. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

State is a party of record to a delinquency proceeding. S.A.S. v. District Court, 623 P.2d 58 (Colo. 1981).

19-2-514. Summons - issuance - contents - service. (1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall set forth the constitutional and legal rights of the juvenile, including the right to have an attorney present at the hearing on the petition.

(2) No summons shall issue to any juvenile or respondent who appears voluntarily, or who waives service, or who has promised in writing to appear at the hearing, but any such person shall be provided with a copy of the petition and summons upon appearance or request.

(3) (a) The court may, when the court determines that it is in the best interests of the juvenile, join the juvenile's parent or guardian and the person with whom the juvenile resides, if other than the juvenile's parent or guardian, as a respondent to the action and shall issue a summons requiring the parent or guardian and the person with whom the juvenile resides, if other than the juvenile's parent or guardian, to appear with the juvenile at all proceedings under this article involving the juvenile. If the parent or guardian of any juvenile cannot be found, the court, in its discretion, may proceed with the case without the presence of such parent or guardian. For the purposes of this section and section 19-2-515, "parent" is defined in section 19-1-103 (82) (b). This subsection (3) shall not apply to any person whose parental rights have been terminated pursuant to the provisions of this title or the parent of an emancipated minor. For the purposes of this section, "emancipated minor" shall have the same meaning as set forth in section 13-21-107.5, C.R.S.

(b) The general assembly hereby declares that every parent or guardian whose juvenile is the subject of a juvenile proceeding under this article shall attend any such proceeding.

(4) The summons shall require the person or persons having the physical custody of the juvenile, if other than a parent or guardian, to appear and to bring the juvenile before the court at a time and place stated not more than thirty days after issuance of the summons.

(5) (a) The court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his or her own behalf or on behalf of the juvenile.

(b) Repealed.

(6) If it appears that the welfare of the juvenile or of the public requires that the juvenile be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the juvenile into custody at once.

(7) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the district court.

(8) (a) A summons issued under this section may be served in the same manner as the summons in a civil action or by mailing it to the juvenile's last-known address by certified mail with return receipt requested not less than five days prior to the time the juvenile is requested to appear in court. Service by mail is complete upon return of the receipt signed by the juvenile, his or her parents, guardian, legal custodian, physical custodian, or spousal equivalent as defined in section 19-1-103 (101).

(b) Service upon the parent, guardian, legal custodian, or physical custodian who has physical care of a juvenile of a summons that contains wording commanding said parent, guardian, legal custodian, or physical custodian to produce the juvenile in court shall constitute valid service compelling the attendance of both the juvenile and said parent, guardian, legal custodian, or physical custodian in court. In addition, service of a summons as described in this paragraph (b) shall compel said parent, guardian, legal custodian, or physical custodian either to make all necessary arrangements to ensure that the juvenile is available to appear before the court or to appear in court and show good cause for the juvenile's failure to appear.

(9) If the parents, guardian, or other legal custodian of the juvenile required to be summoned under subsection (4) of this section cannot be found within the state, the fact of the juvenile's presence in the state shall confer jurisdiction on the court as to any absent parent, guardian, or legal custodian.

(10) When the residence of the person to be served outside the state is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his or her place of residence with a return receipt requested. Service of summons shall be deemed complete five days after return of the requested receipt.

Source: L. 96: Entire article amended with relocations, p. 1637, § 1, effective January 1, 1997. **L. 99:** (8) amended, p. 1374, § 9, effective July 1. **L. 2006:** (5) amended, p. 451, § 1, effective April 18.

Editor's note: (1) This section was formerly numbered as 19-2-306. Prior to relocation in 1996, the said section 19-2-306 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (5)(b)(II) provided for the repeal of subsection (5)(b), effective July 1, 2007. (See L. 2006, p. 451.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Parents named as parties in a juvenile delinquency proceeding do not have a due process right to participate in the adjudicative proceedings. Few due process rights are implicated in the child's delinquency proceedings beyond notice of the charges when custody is not an issue. People ex rel. J.P.L., 214 P.3d 1072 (Colo. App. 2009).

This section deals solely with jurisdiction over the person, and does not concern itself with jurisdiction of the subject matter. Davis v. Dist. Court, 161 Colo. 559, 423 P.2d 846 (1967).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Voluntary appearance waives defective service. A party who appears in the action and voluntarily proceeds with it waives any defect in service of summons. Davis v. Dist. Court, 161 Colo. 559, 423 P.2d 846 (1967).

Proceedings defective where service did not comply with section. Where the record fails to show that notice of hearing was served on parents in delinquency proceedings against a minor

in juvenile court, such proceedings were defective. Martinez v. People, 150 Colo. 374, 372 P.2d 947 (1962).

Applied in Rose v. People, 111 Colo. 220, 139 P.2d 261 (1943).

19-2-515. Contempt - warrant. (1) Except as otherwise provided by subsection (3) of this section, any person summoned or required to appear as provided in section 19-2-514 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the juvenile requires that he or she be brought immediately into the custody of the court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the juvenile.

(3) (a) When a parent or other person who signed a written promise to appear and bring the juvenile to court or who has waived or acknowledged service fails to appear with the juvenile on the date set by the court, a bench warrant may be issued for the parent or other person, the juvenile, or both.

(b) Whenever a parent or guardian or person with whom the juvenile resides, if other than the parent or guardian, who has received a summons to appear fails, without good cause, to appear on any other date set by the court, a bench warrant shall be issued for the parent, guardian, or person with whom the juvenile resides, and the parent, guardian, or person with whom the juvenile resides shall be subject to contempt.

(c) For purposes of this subsection (3), good cause for failing to appear shall include, but shall not be limited to, a situation where a parent or guardian:

(I) Does not have physical custody of the juvenile and resides outside of Colorado;

(II) Has physical custody of the juvenile, but resides outside of Colorado and appearing in court will result in undue hardship to such parent or guardian; or

(III) Resides in Colorado, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent or guardian.

(d) The nonappearance of such parent, guardian, or person with whom the juvenile resides shall not be the basis for a continuance.

(e) The provisions of this subsection (3) shall not be applicable to any proceeding in a case that has been transferred to the district court pursuant to the provisions of section 19-2-518.

(f) The general assembly hereby declares that every parent or guardian whose juvenile is the subject of a juvenile proceeding under this article shall attend any such proceeding.

(g) Nothing in this subsection (3) shall be construed to create a right for any juvenile to have his or her parent or guardian present at any proceeding at which such juvenile is present.

Source: L. 96: Entire article amended with relocations, p. 1638, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-307. Prior to relocation in 1996, the said section 19-2-307 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-516. Petitions - special offenders. (1) **Mandatory sentence offender.** A juvenile is a mandatory sentence offender if he or she:

(a) (I) Has been adjudicated a juvenile delinquent twice; or

(II) Has been adjudicated a juvenile delinquent and if his or her probation has been revoked for a delinquent act; and

(b) (I) Is subsequently adjudicated a juvenile delinquent; or

(II) Has probation revoked for a delinquent act.

(2) **Repeat juvenile offender.** A juvenile is a repeat juvenile offender if he or she has been previously adjudicated a juvenile delinquent and is adjudicated a juvenile delinquent

for a delinquent act that constitutes a felony or if his or her probation is revoked for a delinquent act that constitutes a felony.

(3) **Violent juvenile offender.** A juvenile is a violent juvenile offender if he or she is adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence as defined in section 18-1.3-406 (2), C.R.S.

(4) **Aggravated juvenile offender.** (a) A juvenile offender is an aggravated juvenile offender if he or she is:

(I) Adjudicated a juvenile delinquent for a delinquent act that constitutes a class 1 or class 2 felony or if his or her probation is revoked for a delinquent act that constitutes a class 1 or class 2 felony; or

(II) Adjudicated a juvenile delinquent for a delinquent act that constitutes a felony and either is subsequently adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406 (2), C.R.S., or has his or her probation revoked for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406 (2), C.R.S.; or

(III) Adjudicated a juvenile delinquent or if his or her probation is revoked for a delinquent act that constitutes felonious unlawful sexual behavior under part 4 of article 3 of title 18, C.R.S., incest under section 18-6-301, C.R.S., or aggravated incest under section 18-6-302, C.R.S.

(b) Provisions concerning aggravated juvenile offenders are located in section 19-2-601.

Source: L. 96: Entire article amended with relocations, p. 1639, § 1, effective January 1, 1997. **L. 2002:** (3) and (4)(a)(II) amended, p. 1524, § 227, effective October 1.

Editor's note: This section was formerly numbered as 19-2-801 (1), 19-2-802 (1), 19-2-803 (1), and 19-2-804 (1). Prior to relocation in 1996, these sections were contained in a title that was repealed and reenacted in 1987. Provisions of these sections, as they existed in 1987, were contained in several sections in 1986, the year prior to the repeal and reenactment of this title. For a detailed comparison, see the "Children's Code (1987)" table located in the back of the index.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (3) and (4)(a)(II), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Statute meets equal protection and due process requirements. Statutory scheme under which juvenile may be classified as mandatory sentence offender either upon probation revocation or upon new adjudication of delinquency and under which prosecutor has discretion to seek revocation rather than new adjudication, thus avoiding necessity for preliminary hearing and jury trial, does not deny juveniles equal protection nor unconstitutionally delegate discretion to prosecutor. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Because former § 19-2-703 (4) provides for notice and a hearing when a juvenile has allegedly violated probation and because the prosecution must establish the alleged criminal offense beyond a reasonable doubt, the statutory scheme under which probation revocation triggers mandatory sentence offender status does not deny due process. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Constitutionally void dispositions cannot be used as basis for enhanced punishment. Where the referee in two prior delinquency hearings failed to comply with the mandates of C.R.J.P. 3, the prior dispositions are constitutionally void and cannot be used as the basis for enhanced punishment proceedings under this section. People v. M.A.W., 651 P.2d 433 (Colo. App. 1982).

Previous adjudication need not be based on felony. The unambiguous language of former subsection (2)(b) requires two prior acts by a child each of which would have constituted a crime if committed by an adult; there is no merit in the contention that the subsection must be read to include the definition of a repeat juvenile offender (former § 19-1-103 (23.5)) that would require one of the previous adjudications to be based on a felony. People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979).

Subsection (1) makes no reference to the date of the commission of the offense underlying the prior adjudications. Although the delinquent act at issue occurred before the de-

fendant's two previous adjudications as a juvenile delinquent, the statute requires only that a juvenile be adjudicated delinquent after the entry of two prior delinquency adjudications. People ex rel. J.C.P., 151 P.3d 635 (Colo. App. 2006).

The violent juvenile offender statute does not create a separate and distinct offense; rather, it is a dispositional statute associated with the underlying delinquent act and thus does not violate this constitutional guarantee of equal protection. People in Interest of D.G., 725 P.2d 1166 (Colo. App. 1986).

Juvenile's right to equal protection was not violated by trial court's refusal to grant juvenile, who was charged as being a violent juvenile offender, five rather than four peremptory challenges where juvenile failed to show that there was unequal treatment within the class of violent juvenile offenders. Although an aggravated juvenile offender is entitled to five peremptory challenges under former § 19-2-804 (4)(b)(I) (now § 19-2-601 (3)(b)(I)), the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Although violent juvenile offender was granted four rather than the five peremptory challenges awarded to an aggravated juvenile offender, violent juvenile offender's right to equal protection was not violated where the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Plain language of the statute does not require extra procedural requirements for enhanced sentencing of mandatory sentence offenders; state need not plead and prove previous adjudications beyond a reasonable doubt. People v. J.J.H., 17 P.3d 159 (Colo. 2001).

Comparison to adult habitual criminal prosecution not persuasive in interpreting the procedures for sentencing mandatory sentence offenders, since there are fundamental differences between the juvenile system of justice and the adult system of justice; the goals of the juvenile system are to remain informal, flexible, and focused on rehabilitation, whereas, the adult criminal system's approach is hardened in procedures, goals, and penalties. People v. J.J.H., 17 P.3d 159 (Colo. 2001).

19-2-517. Direct filing. (1) A juvenile may be charged by the direct filing of an information in the district court or by indictment only if:

(a) The juvenile is sixteen years of age or older at the time of the commission of the alleged offense and:

(I) Is alleged to have committed a class 1 or class 2 felony; or

(II) Is alleged to have committed a sexual assault that is a crime of violence pursuant to section 18-1.3-406, C.R.S., or a sexual assault under the circumstances described in section 18-3-402 (5) (a), C.R.S.; or

(III) (A) Is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S., other than a sexual assault as described in subparagraph (II) of this paragraph (a), or is alleged to have committed sexual assault pursuant to section 18-3-402, C.R.S., sexual assault on a child pursuant to section 18-3-405, C.R.S., or sexual assault on a child by one in a position of trust pursuant to section 18-3-405.3, C.R.S.; and

(B) Is found to have a prior adjudicated felony offense; or

(IV) Has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2-518; except that:

(A) If the juvenile is found not guilty in district court of the prior felony or any lesser included offense, the subsequent charge shall be remanded to the juvenile court; and

(B) If the juvenile is convicted in district court in the prior case of a lesser included or nonenumerated offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section, the subsequent charge may be remanded to the juvenile court.

(V) to (VII) (Deleted by amendment, L. 2012.)

(b) and (c) (Deleted by amendment, L. 2012.)

(1.5) If, after a preliminary hearing, the district court does not find probable cause for an offense that may be charged by direct filing, or if the direct file eligible offense is dismissed at a later date, the court shall remand the case to the juvenile court.

(2) Notwithstanding the provisions of section 19-2-518, after filing charges in the juvenile court but before the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information

in the district court or by indictment pursuant to this section. Upon the filing or indictment in the district court, the juvenile court shall no longer have jurisdiction over proceedings concerning the charges.

(3) (a) After a juvenile case has been charged by direct filing of information or by an indictment in district court, the juvenile may file in district court a motion to transfer the case to juvenile court. The juvenile must file the motion no later than the time to request a preliminary hearing. Upon receipt of the motion, the court shall set the reverse-transfer hearing with the preliminary hearing. The court shall permit the district attorney to file a response to the juvenile's motion to transfer the case to juvenile court. The district attorney shall file the response no later than fourteen days before the reverse-transfer hearing.

(b) In determining whether the juvenile and the community would be better served by adjudicative proceedings pursuant to this article or by proceedings under title 16, C.R.S., the court shall consider the following factors:

(I) The seriousness of the alleged offense and whether the protection of the community requires response or consequence beyond that afforded by this article;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The age of the juvenile and the maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(V) The record and previous history of the juvenile in prior court-related matters;

(VI) The current and past mental health status of the juvenile as evidenced by relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel;

(VII) The likelihood of the juvenile's rehabilitation by use of the sentencing options available in the juvenile courts and district courts;

(VIII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;

(IX) The impact of the offense on the victim;

(X) Whether the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony; and

(XI) Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of the delinquent act.

(c) If the district court determines pursuant to paragraph (b) of this subsection (3) that the juvenile and the community would be better served by adjudicative proceedings pursuant to this article, the court shall enter an order directing that the offenses against the juvenile be adjudicated in juvenile court pursuant to the provisions of this article.

(4) and (5) (Deleted by amendment, L. 2012.)

(6) (a) If a juvenile is convicted following the filing of criminal charges by information or indictment in the district court pursuant to this section, the district judge shall sentence the juvenile either:

(I) As an adult; except that a juvenile is excluded from the mandatory minimum sentencing provisions in section 18-1.3-406, C.R.S., unless the juvenile is convicted of a class 1 felony or a sex offense that is subject to part 9 of article 1.3 of title 18, C.R.S.; or

(II) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407, C.R.S.; except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) Any sexual offense described in section 18-6-301 or 18-6-302, C.R.S., or part 4 of article 3 of title 18, C.R.S.; or

(C) A second or subsequent offense, if the juvenile received a sentence to the department of corrections or to the youthful offender system for the prior offense.

(III) (Deleted by amendment, L. 2012.)

(b) The district court judge may sentence a juvenile pursuant to the provisions of this article if the juvenile is convicted of a lesser included or nonenumerated felony offense for

which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section. If the juvenile is convicted of only a misdemeanor offense or misdemeanor offenses, the court shall adjudicate the juvenile a delinquent and sentence the juvenile pursuant to this article.

(c) If a juvenile is convicted of an offense that is not eligible for district court jurisdiction under either this section or section 19-2-518, the juvenile shall be remanded to juvenile court.

(7) In the case of a person who is sentenced as a juvenile pursuant to subsection (6) of this section, the following provisions shall apply:

(a) Section 19-2-908 (1) (a), regarding mandatory sentence offenders;

(b) Section 19-2-908 (1) (b), regarding repeat juvenile offenders;

(c) Section 19-2-908 (1) (c), regarding violent juvenile offenders; and

(d) Section 19-2-601, regarding aggravated juvenile offenders.

(8) The court in its discretion may appoint a guardian ad litem for a juvenile charged by the direct filing of an information in the district court or by indictment pursuant to this section.

(9) When a juvenile is sentenced pursuant to the provisions of this article, the juvenile's conviction shall be adjudicated as a juvenile delinquency adjudication.

(10) For purposes of this section, "violent juvenile offender" has the same meaning as defined in section 19-2-516 (3).

Source: L. 96: Entire article amended with relocations, p. 1640, § 1, effective January 1, 1997. **L. 99:** (3)(b) amended, p. 43, § 2, effective March 15; (3)(a) amended, p. 1369, § 1, effective July 1. **L. 2000:** (1)(a)(III) amended, p. 706, § 33, effective July 1. **L. 2002:** (1)(a)(II)(A), (1)(a)(III), (3)(a)(II), and (3)(a)(III) amended, p. 1524, § 228, effective October 1. **L. 2003:** (1)(a)(II)(B) amended, p. 649, § 6, effective May 17. **L. 2004:** (3)(b) repealed, p. 244, § 4, effective April 5. **L. 2006:** (1)(a) amended, p. 422, § 6, effective April 13. **L. 2008:** (3)(a.5) added, p. 1506, § 1, effective May 28. **L. 2010:** Entire section R&RE, (HB 10-1413), ch. 264, p. 1199, § 1, effective August 11. **L. 2012:** Entire section amended, (HB 12-1271), ch. 128, p. 439, § 1, effective April 20.

Editor's note: This section was formerly numbered as § 19-2-805. Prior to relocation in 1996, the said § 19-2-805 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in § 19-1-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1)(a)(II)(A), (1)(a)(III), (3)(a)(II), and (3)(a)(III), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Psychological Considerations in Direct Filing", see 40 Colo. Law. 41 (May 2011).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

District attorney may properly invoke concurrent jurisdiction of district court under former § 19-1-104 (4)(b)(II) and former § 19-1-103 (9)(b)(II) in deciding to proceed against a person between the ages of 16 and 18 in district rather than juvenile court. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

Former § 19-1-104 (4)(b)(II) (similar provisions now found in this section) is not an ex post facto law. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

The broad discretion granted to a district attorney by subsection (4)(b)(II) does not deny due process and equal protection of the laws. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

Former § 19-1-104 (4)(b)(II) (similar provisions now found in this section) does not punish a prior adjudication of delinquency, but rather, it provides a mechanism whereby a person between the ages of 16 and 18 may be treated as an adult if such person has a record of juvenile delinquency and is alleged to have committed a felony. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

The direct file statute does not discriminate against a juvenile in district court based on whether it was a direct file or transfer, so the

statute does not violate the requirement of uniform operation of laws. Flakes v. People, 153 P.3d 427 (Colo. 2007).

The direct file statute does not violate separation of powers. Prosecutorial discretion balanced by the district court's sentencing discretion is not unconstitutional. Flakes v. People, 153 P.3d 427 (Colo. 2007).

District attorney may properly invoke concurrent jurisdiction of district court under former § 19-1-104 (4)(b)(II) (similar provision now found in this section) and former § 19-1-103 (9)(b)(II) in deciding to proceed against a person between the ages of 16 and 18 in district rather than juvenile court. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974); People v. Thorpe, 641 P.2d 935 (Colo. 1982).

Allegation of the commission of a violent felony, and not conviction, triggers district court's subject matter jurisdiction under plain language of former § 19-2-805 (1)(a)(II)(A) (now in this section). People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Criminally negligent homicide is not an enumerated offense for purposes of the direct file statute. The offense is not a per se crime of violence and merely alleging use of a deadly weapon as part of the factual basis does not satisfy the requirement of the crime of violence statute. In addition, the elements of the crime do not include the use, possession, or threatened use of a deadly weapon. People v. Vickers, 168 P.3d 9 (Colo. App. 2007).

For first degree burglary to be enumerated as a crime of violence, and thus to allow a direct filing, the prosecution must allege that defendant used, possessed, or threatened the use of a deadly weapon or caused serious bodily injury. People v. Ball, 22 P.3d 574 (Colo. App. 2001).

District attorney has sole discretion in charging as adult or juvenile. The statutory scheme of former § 19-1-104 (4) (now this section) is clear and vests the determination whether a person shall be charged as an adult or a juvenile solely in the discretion of the district attorney. People v. Thorpe, 641 P.2d 935 (Colo. 1982).

Hearing not required prior to criminal prosecution. A quasi-judicial hearing is not required to be held by the district attorney as a precondition to his determination that a child 14 years of age or older alleged to have committed a crime of violence defined as a class 1 felony shall be prosecuted in a criminal proceeding. People v. Thorpe, 641 P.2d 935 (Colo. 1982).

Charges involving a minor should be resolved in adult court when the requirements of the direct filing statute are satisfied as to any charge. People v. Dalton, 70 P.3d 517 (Colo. App. 2002).

The district attorney may not directly file charges in district court where the identical charges were initially filed in juvenile court and a transfer hearing is pending. J.D.C. v. Dist. Court 18th Jud. Dist., 910 P.2d 684 (Colo. 1996) (decided prior to amendment of § 19-2-104 (1)(b) specifically authorizing direct filing under such circumstances).

Exception to juvenile court's exclusive jurisdiction in cases where prosecution directly files charges. Under the plain language of subsection (2) of this section and §§ 19-2-104 (1)(b) and 19-2-518 (2), a prosecutor has discretion to proceed charging alleged juvenile offenders who are eligible to be charged as adults by means of a direct filing in district court until such time as the juvenile court actually conducts a transfer hearing. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Because the conducting of a transfer hearing is the only event that vests the juvenile court with exclusive jurisdiction and the juvenile court had not conducted a transfer hearing before the prosecution directly filed the information, the district court had jurisdiction. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Additional charges must be prosecuted in same action. When a court has jurisdiction to entertain criminal proceedings against a juvenile under former § 19-1-104 (4)(b)(II), any additional charges arising out of the same act or series of acts can and must be prosecuted in that same action, even though they do not rise to the seriousness of class 3 felonies. People v. Jiminez, 651 P.2d 395 (Colo. 1982).

The direct file statute does not provide for mandatory adult sentences for unenumerated offenses. The district court retains its discretion to sentence juveniles found guilty of unenumerated charges as either adults or juveniles as an exercise of its general jurisdiction over juvenile and criminal matters. Flakes v. People, 153 P.3d 427 (Colo. 2007); People v. Vickers, 168 P.3d 9 (Colo. App. 2007).

A district court sentencing a juvenile found guilty of unenumerated offenses must make a finding of why the court is treating the juvenile as an adult or as a juvenile and must explain the chosen sentence. Flakes v. People, 153 P.3d 427 (Colo. 2007); People v. Vickers, 168 P.3d 9 (Colo. App. 2007).

A child under 18 may be charged with a felony only as provided in former § 19-1-104 (4) (now this section). People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967); People ex rel. Rodello v. Dist. Court, 164 Colo. 530, 436 P.2d 672 (1968); I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970); Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

A minor pursuant to former § 19-1-104 (4) (now this section) may be tried as an adult. Romero v. Dist. Court, 178 Colo. 200, 496 P.2d 1049 (1972).

A child under 14 years of age is not held criminally responsible for actions, which if

committed by an adult, would constitute a felony. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

Plain language of statute prior to 2006 amendment was ambiguous as to whether a juvenile must be 14 years of age when delinquent act occurred or when prosecution filed charges. Based upon the stated purpose and legislative intent, a juvenile must have been at least 14 years of age at time delinquent act occurred. Bostelman v. People, 162 P.3d 686 (Colo. 2007).

District court had no jurisdiction to proceed by direct information charging felony against 17-year-old. People ex rel. Rodello v. Dist. Court, 164 Colo. 530, 436 P.2d 672 (1968).

Measuring two-year period set out in former § 19-2-805 (now this section). The critical two-year period of time as set out in former § 19-2-805 (now this section) is measured from the date of the previous adjudication of delinquency to the date of the commission of the subsequent offense, and not from the previous adjudication to the date of the filing of the information charging defendant with the subsequent offense. People v. Trujillo, 983 P.2d 124 (Colo. App. 1999).

Date child is adjudicated delinquent. For purposes of former § 19-1-104 (4)(b)(II) (now this section), the date upon which one is adjudicated a delinquent child is the date the trial court made its written findings and entered its judgment of delinquency. People v. Alward, 654 P.2d 327 (Colo. App. 1982), cert. dismissed, 677 P.2d 948 (Colo. 1984).

Juvenile court had no jurisdiction to order the placement of a juvenile in the custody of the department of human services when the district court ordered that juvenile held in county jail awaiting trial on charges filed against the juvenile as an adult. People v. Juvenile Court, 915 P.2d 1274 (Colo. 1996).

A trial court sentencing a juvenile on a direct-filed charge of a violent crime retains discretion to impose a sentence to the department of corrections. People v. Espinoza, 990 P.2d 1117 (Colo. App. 1999).

19-2-518. Transfers. (1) (a) The juvenile court may enter an order certifying a juvenile to be held for criminal proceedings in the district court if:

(I) A petition filed in juvenile court alleges the juvenile is:

(A) Twelve or thirteen years of age at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence, as defined in section 18-1.3-406, C.R.S.; or

(B) Fourteen years of age or older at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a felony; and

(II) After investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction.

(b) A petition may be transferred from the juvenile court to the district court only after a hearing as provided in this section.

(c) If the crime alleged to have been committed is a felony defined by section 18-8-208, C.R.S., and no other crime is alleged to have been committed and the juvenile has been adjudicated a juvenile delinquent for a delinquent act which constitutes a class 4 or 5 felony, then the charge for the crime may not be filed directly in the district court, but the juvenile court may transfer such charge to the district court pursuant to paragraph (a) of this subsection (1).

(d) (I) Except as otherwise provided in subparagraph (II) of this paragraph (d), in cases in which criminal charges are transferred to the district court pursuant to the provisions of this section, the judge of the district court shall sentence the juvenile pursuant to the provisions of section 18-1.3-401, C.R.S., if the juvenile is:

(A) Convicted of a class 1 felony;

(B) Convicted of a crime of violence, as defined in section 18-1.3-406, C.R.S.; or

(C) Convicted of any other criminal charge specified in paragraph (a) of this subsection (1) and the juvenile was previously adjudicated a mandatory sentence offender, a violent juvenile offender, or an aggravated juvenile offender.

(II) In cases in which criminal charges are transferred to the district court pursuant to the provisions of this section, the judge of the district court may sentence to the youthful offender system created in section 18-1.3-407, C.R.S., any juvenile who would otherwise be sentenced pursuant to the provisions of subparagraph (I) of this paragraph (d); except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) to (D) (Deleted by amendment, L. 2010, (HB 10-1413), ch. 264, p. 1203, § 2, effective August 11, 2010.)

(E) Any sexual offense described in section 18-6-301 or 18-6-302, C.R.S., or part 4 of article 3 of title 18, C.R.S.

(III) In cases in which criminal charges are transferred to the district court pursuant to the provisions of this section and the juvenile is not eligible for sentencing pursuant to subparagraph (I) of this paragraph (d), the judge of the district court shall have the power to make any disposition of the case that any juvenile court would have or to remand the case to the juvenile court for disposition at its discretion.

(IV) If, following transfer of criminal charges to the district court pursuant to this section, a juvenile is convicted of a lesser included offense for which criminal charges could not originally have been transferred to the district court, the court shall sentence the juvenile pursuant to the provisions of this article.

(d.5) (Deleted by amendment, L. 2010, (HB 10-1413), ch. 264, p. 1203, § 2, effective August 11, 2010.)

(e) Whenever a juvenile under the age of fourteen years is sentenced pursuant to section 18-1.3-401, C.R.S., as provided in paragraph (d) of this subsection (1), the department of corrections shall contract with the department of human services to house and provide services to the juvenile in a facility operated by the department of human services until the juvenile reaches the age of fourteen years. On reaching the age of fourteen years, the juvenile shall be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

(2) After filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to section 19-2-517. Upon said filing or indictment in the district court, the juvenile court shall no longer have jurisdiction over proceedings concerning said charges.

(3) At the transfer hearing, the court shall consider:

(a) Whether there is probable cause to believe that the juvenile has committed a delinquent act for which waiver of juvenile court jurisdiction over the juvenile and transfer to the district court may be sought pursuant to subsection (1) of this section; and

(b) Whether the interests of the juvenile or of the community would be better served by the juvenile court's waiving its jurisdiction over the juvenile and transferring jurisdiction over him or her to the district court.

(4) (a) The hearing shall be conducted as provided in section 19-1-106, and the court shall make certain that the juvenile and his or her parents, guardian, or legal custodian have been fully informed of their right to be represented by counsel.

(b) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(I) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(V) The record and previous history of the juvenile;

(VI) The likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court;

(VII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;

(VIII) The impact of the offense on the victim;

(IX) That the juvenile was twice previously adjudicated a delinquent juvenile for delinquent acts that constitute felonies;

(X) That the juvenile was previously adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406, C.R.S.;

(XI) That the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony;

(XII) That the juvenile is sixteen years of age or older at the time of the offense and the present act constitutes a crime of violence, as defined in section 18-1.3-406, C.R.S.;

(XIII) That the juvenile is sixteen years of age or older at the time of the offense and has been twice previously adjudicated a juvenile delinquent for delinquent acts against property that constitute felonies; and

(XIV) That the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of a delinquent act.

(c) The amount of weight to be given to each of the factors listed in paragraph (b) of this subsection (4) is discretionary with the court; except that a record of two or more previously sustained petitions for delinquent acts that constitute felonies or a record of two or more juvenile probation revocations based on acts that constitute felonies shall establish prima facie evidence that to retain jurisdiction in juvenile court would be contrary to the best interests of the juvenile or of the community.

(d) The insufficiency of evidence pertaining to any one or more of the factors listed in paragraph (b) of this subsection (4) shall not in and of itself be determinative of the issue of waiver of juvenile court jurisdiction.

(5) Repealed.

(6) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history may be considered by the court, but the court, if so requested by the juvenile, his or her parent or guardian, or other interested party, shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(7) (a) If the court finds that its jurisdiction over a juvenile should be waived, it shall enter an order to that effect; except that such order of waiver shall be null and void if the district attorney fails to file an information in the criminal division of the district court within five days of issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays. Upon failure of the district attorney to file an information within five days of the issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays, the juvenile court shall retain jurisdiction and shall proceed as provided in this article.

(b) As a condition of the waiver of jurisdiction, the court in its discretion may provide that a juvenile shall continue to be held in custody pending the filing of an information in the criminal division of the district court. Where the juvenile has made bond in proceedings in the juvenile court, the bond may be continued and made returnable in and transmitted to the district court, where it shall continue in full force and effect unless modified by order of the district court.

(8) If the court finds that it is in the best interests of the juvenile and of the public for the court to retain jurisdiction, it shall proceed with the adjudicatory trial as provided in part 8 of this article.

Source: L. 96: Entire article amended with relocations, p. 1642, § 1, effective January 1, 1997. **L. 99:** (1)(d) amended, p. 1370, § 2, effective July 1. **L. 2002:** (1)(a)(I)(A), (1)(d)(I), (1)(d)(II), (1)(e), (4)(b)(X), and (4)(b)(XII) amended, p. 1525, § 229, effective October 1. **L. 2006:** (1)(a)(I) amended, p. 423, § 7, effective April 13. **L. 2008:** (1)(d.5) added, p. 1506, § 2, effective May 28. **L. 2010:** (1)(d)(II)(B), (1)(d)(II)(C), (1)(d)(II)(D), (1)(d.5), and (5) amended, (HB 10-1413), ch. 264, p. 1203, § 2, effective August 11. **L. 2012:** (5) repealed, (HB 12-1271), ch. 128, p. 445, § 2, effective April 20.

Editor's note: This section was formerly numbered as § 19-2-806. Prior to relocation in 1996, the said § 19-2-806 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in §§ 19-1-104 and 19-3-108 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1)(a)(I)(A), (1)(d)(I), (1)(d)(II), (1)(e), (4)(b)(X), and (4)(b)(XII), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For note, "The Expanding Scope of Prosecutorial Discretion in Charging Juveniles as Adults: A Critical Look at People v. Thorpe", see 54 U. Colo. L. Rev. 617 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Rules of procedure governing section. This section is governed by the rules of juvenile procedure and by the rules of civil procedure if there is no applicable rule of juvenile procedure. Stroh v. Johnson, 194 Colo. 411, 572 P.2d 840 (1978).

Former § 19-1-104 (4)(a) (now this section) is not unconstitutional as denying due process of law. People v. Moseley, 193 Colo. 256, 566 P.2d 331 (1977).

Former § 19-1-104 (4)(a) does not constitute a violation of substantive due process nor an equal protection violation. Statute is a valid exercise of prosecutorial discretion and it is not unreasonable to treat certain juvenile offenders differently from others. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Former § 19-1-104 (4)(a) does not constitute an unlawful delegation of legislative power to the judiciary. People v. Moseley, 193 Colo. 256, 566 P.2d 331 (1977).

Jurisdiction transferable by juvenile court. Only under certain narrowly described circumstances may the juvenile court in a delinquency proceeding enter an order certifying the child to be held for criminal proceedings in the district court. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

Discretion of court in transfer hearing. The design of this section is to permit the juvenile court, in case of a less serious felony, to determine in a transfer hearing whether, in the best interests of the accused juvenile, the case should be transferred to the criminal side of the court; but in those circumstances where a more serious felony is charged, as set forth in former § 19-1-104 (4)(b) (now this section), no such discretion lies in the court to retain the case in the juvenile side of the court when the district attorney elects to have the case transferred for trial as a criminal action. People v. Dist. Court, 191 Colo. 28, 549 P.2d 1317 (1976); People v. Thorpe, 641 P.2d 935 (Colo. 1982).

To transfer jurisdiction from juvenile court to district court, the trial court must determine the following: (1) Whether there is "probable cause" to believe that the juvenile committed the offense for which the prosecution seeks a waiver of jurisdiction; and (2) whether it would be contrary to the best interests of the juvenile or the public to retain jurisdiction over the child. People v. Lee, 989 P.2d 777 (Colo. App. 1999).

The eight factors the court must consider in determining the best interests of the juvenile and public are as follows: (1) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities; (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether the alleged offense was against persons or property, greater weight being given to offenses against persons; (4) the maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living; (5) the record and previous history of the juvenile; (6) the likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court; (7) the interest of the community in the imposition of a punishment commensurate with the gravity of the offense; and (8) the impact of the offense on the victim. People v. Lee, 989 P.2d 777 (Colo. App. 1999).

Transfer to district court was appropriate, even though alleged offenses were against property rather than a person, where the court found the following factors: (1) The offenses were committed in a premeditated and willful manner; (2) defendant was more mature than his chronological age; (3) the interest of the community in the imposition of punishment commensurate with the offenses supported transfer because the school building that was the object of the arson was important to the community; and (4) in light of the historic nature of the building and the risk to the lives of the firefighters who extinguished the blaze, the impact of the offense on the victim was quite serious. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Court considers interest of child or public. At the hearing provided for in this section the juvenile court may consider only whether it would be contrary to the best interests of the child or of the public to retain jurisdiction over the child. If the court finds that a child should be held for criminal proceedings in the district court, it shall enter an order certifying that fact and transfer the case to the district court. Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

The test under subsection (3)(b) is whether the interests of the juvenile or the community would be better served by the juvenile court's

waiving its jurisdiction. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Appearance waives personal service. The voluntary appearance of juvenile's mother and her participation in the transfer hearing constitutes a waiver of her right to personal service. People v. District Court, 183 Colo. 101, 515 P.2d 101 (1973).

The probable-cause phase of a transfer hearing is equivalent to a preliminary hearing. Thus, the case law on preliminary hearings applies to the probable-cause phase of transfer hearings. People v. Juvenile Court, 813 P.2d 326 (Colo. 1991); People v. Hayes, 923 P.2d 221 (Colo. App. 1995).

Juvenile not entitled to another determination of probable cause. A juvenile who was transferred to the district court from the juvenile court, after a transfer hearing where probable cause as to the offenses charged was determined, was not entitled in the district court to another determination of probable cause in the form of a preliminary hearing. People v. Flanigan, 189 Colo. 43, 536 P.2d 41 (1975).

Due process does not require that the evidence supporting a transfer in a juvenile proceeding be clear and convincing. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Nor is it necessary that the factors in support of transfer clearly and convincingly outweigh the factors in support of retaining jurisdiction. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Evidence sufficient to meet probable cause standard. To meet the standard of probable cause, the prosecution need only present evidence sufficient to induce a person of ordinary prudence and caution to entertain a reasonable belief that the defendant committed the crime. People v. Juvenile Court, 813 P.2d 326 (Colo. 1991).

Evidence presented at transfer hearing sufficient to justify waiver of juvenile court jurisdiction. People in Interest of G.A.T., 183 Colo. 111, 515 P.2d 104 (1973).

A transfer order from juvenile to district court is not a final judgment from which appeal lies. D.H. v. People, 192 Colo. 542, 561 P.2d 5 (1977).

It is evident from the provisions of subsection (4) of this section and §§ 19-3-106 and 19-3-109 that an order of the juvenile division of the district court waiving jurisdiction is not a final disposition of the action. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

But is interlocutory in nature. A transfer order from juvenile to district court is interlocutory in nature and in no sense completely determines the rights of the parties. D.H. v. People, 192 Colo. 542, 561 P.2d 5 (1977).

Once a transfer order under subsection (1)(a) has been entered, juvenile court has no further jurisdiction unless district court, in its discretion, chooses to remand case to juvenile court for disposition. People v. Armand, 873 P.2d 7 (Colo. App. 1993).

The district attorney may not directly file charges in district court where the identical charges were initially filed in juvenile court and a transfer hearing is pending. J.D.C. v. Dist. Court 18th Jud. Dist., 910 P.2d 684 (Colo. 1996) (decided prior to amendment of § 19-2-104 (1)(b) specifically authorizing direct filing under such circumstances).

Exception to juvenile court's exclusive jurisdiction in cases where prosecution directly files charges. Under the plain language of subsection (2) of this section and §§ 19-2-104 (1)(b) and 19-2-517 (2), a prosecutor has discretion to proceed charging alleged juvenile offenders who are eligible to be charged as adults by means of a direct filing in district court until such time as the juvenile court actually conducts a transfer hearing. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Because the conducting of a transfer hearing is the only event that vests the juvenile court with exclusive jurisdiction and the juvenile court had not conducted a transfer hearing before the prosecution directly filed the information, the district court had jurisdiction. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Whenever a juvenile court elects to waive jurisdiction over a child and certifies child to the criminal jurisdiction of a district court, the district court retains jurisdiction over the child, and it may properly impose sentence for any resulting felony convictions. Although this section grants the district court the power to dispose of the case as would a juvenile court, or to remand the case to the juvenile court for disposition, the decision to do so is within the discretion of the district court. People v. Hernandez, 690 P.2d 263 (Colo. App. 1984).

Trial court did not abuse its discretion in transferring jurisdiction of a case from juvenile court to district court despite defendant's arguments that he was not 16 years old at the time of alleged offense, that he had been previously adjudicated a delinquent on only one occasion, and that he had not been previously committed to department of institutions or been adjudicated for any crime of violence. The court properly relied on the fact that defendant had been in juvenile system for offenses involving sexual aggression, that he appeared to pose a threat to children, that he was on probation at the time of present offense, and that alleged offense was a serious one. People v. Armand, 873 P.2d 7 (Colo. App. 1993).

Abuse of juvenile court's discretion. Juvenile court abused its discretion during the transfer hearing by finding sua sponte that there was

probable cause to support the lesser-included offense of attempt to commit manslaughter rather than attempt to commit first degree murder as charged by the people. People v. Juvenile Court, 813 P.2d 326 (Colo. 1991).

Under subsection (1)(d)(I), the court may sentence a defendant as an adult or, in its discretion, as a juvenile or remand the case to juvenile court unless the individual falls within one of the classifications of juveniles who must be sentenced as adults. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Subsection (1)(d)(1) requires that a juvenile who is convicted of a crime of violence be sentenced pursuant to § 18-1-105. Because assault in the second degree under § 18-3-203 (1)(g) is a per se crime of violence under § 16-11-309, defendant's conviction under that statute is considered a conviction for a crime of violence and therefore the court had no discretion to impose a juvenile disposition but, rather, was required to impose sentence under § 18-1-105 (9) and (9.7). People v. Lee, 989 P.2d 777 (Colo. App. 1999).

Applied in People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People v. Thorpe, 641 P.2d 935 (Colo. 1982); People v. Zamora, 13 P.3d 813 (Colo. App. 2000); People v. Hoang, 13 P.3d 819 (Colo. App. 2000).

PART 6

SPECIAL PROCEEDINGS

19-2-601. Aggravated juvenile offender. (1) (a) In any action in delinquency alleging that a juvenile is an aggravated juvenile offender, as described in section 19-2-516 (4), the petition shall allege by separate count that the juvenile is an aggravated juvenile offender and that increased commitment is authorized.

(b) If the petition alleges that the juvenile is an aggravated juvenile offender, pursuant to section 19-2-516 (4), the petition shall identify by separate counts each alleged former adjudication or probation revocation and, for each such count, shall include the date of adjudication or revocation, the court, and the specific act that formed the basis for the adjudication or probation revocation. If the alleged prior adjudication or probation revocation occurred outside of this state, the petition shall so allege and shall state that the delinquent act that formed the basis for the adjudication or probation revocation would constitute a felony in this state.

(2) (a) In any action in delinquency in which it is alleged that a juvenile is an aggravated juvenile offender, the court shall, at the juvenile's first appearance, advise the juvenile of the effect and consequences of the allegation that the juvenile is an aggravated juvenile offender.

(b) If a juvenile is alleged to be an aggravated juvenile offender pursuant to section 19-2-516 (4), the juvenile shall be required, at his or her first appearance before the court, to admit or deny any previous adjudications or probation revocations that are alleged in the petition. A refusal to admit or deny any such adjudication or probation revocation shall be considered a denial.

(3) (a) In addition to the rights specified in section 19-2-706, a juvenile who is alleged to be an aggravated juvenile offender may file a written request that adjudication of the act that is the subject of the petition shall be to a jury of twelve persons, and the court shall so order it. Any juvenile who requests a jury shall be deemed to have waived the time limit for an adjudicatory trial pursuant to section 19-2-107 (4).

(b) When a jury is requested pursuant to this subsection (3), the following challenges shall be allowed:

(I) If the petition alleges that one juvenile is an aggravated juvenile offender, the state and the juvenile shall each be entitled to five peremptory challenges.

(II) If the petition alleges that more than one juvenile is an aggravated juvenile offender and the adjudicatory trials on the acts that are the subject of the petition are not severed, the state and the defense shall be entitled to two additional challenges for every juvenile after the first, not to exceed fifteen peremptory challenges per side; when multiple juveniles are adjudicated in a single hearing, each peremptory challenge made on the part of the juveniles shall be made and considered as the joint peremptory challenge of all of the juveniles.

(c) When more than one petition concerning different juveniles is consolidated for the adjudication of the delinquent acts that are the subjects of the petitions, peremptory

challenges shall be allowed as if the juveniles had been joined in the same petition in delinquency.

(4) (a) If a juvenile alleged to be an aggravated juvenile offender pursuant to section 19-2-516 (4) admits the previous adjudications or probation revocations alleged in the petition, pursuant to subsection (2) of this section, no further proof of such previous adjudications or probation revocations is required. Upon a finding that the juvenile has committed the delinquent acts that are the subject of the petition alleging that the juvenile is an aggravated juvenile offender, the court may enter any sentence authorized by this section.

(b) If a juvenile alleged to be an aggravated juvenile offender pursuant to section 19-2-516 (4) denies one or more of the previous adjudications or probation revocations alleged in the petition, pursuant to subsection (2) of this section, the court, after a finding of guilty of the acts that are the subject of this petition, shall conduct a separate hearing in which the court shall be the trier of fact to determine whether or not the juvenile has suffered such adjudications or probation revocations. Each count alleging a previous adjudication or probation revocation shall be proven beyond a reasonable doubt.

(c) In any hearing before the court pursuant to paragraph (b) of this subsection (4), a duly authenticated copy of the record of an adjudication or probation revocation shall be prima facie evidence that the juvenile suffered such adjudication or probation revocation. In addition, any basic identification information that is part of the record of such former adjudication or probation revocation at the place the juvenile was incarcerated after disposition of such adjudication or probation revocation may be introduced into evidence in any hearing before the court pursuant to paragraph (b) of this subsection (4) and shall be prima facie evidence of the identity of the juvenile.

(5) (a) (I) Upon adjudication as an aggravated juvenile offender:

(A) For an offense other than an offense that would constitute a class 1 or 2 felony if committed by an adult, the court may commit the juvenile to the department of human services for a determinate period of up to five years;

(B) For an offense that would constitute a class 2 felony if committed by an adult, the court shall commit the juvenile to the department of human services for a determinate period of at least three but not more than five years;

(C) For an offense that would constitute a class 1 felony if committed by an adult, the court shall commit the juvenile to the department of human services for a determinate period of at least three but not more than seven years;

(D) When the petition alleges the offense of murder in the first degree or murder in the second degree, and the juvenile is adjudicated a delinquent for either murder in the first degree or murder in the second degree, then the court may sentence the juvenile consecutively or concurrently for any crime of violence as described in section 18-1.3-406, C.R.S., or aggravated juvenile offender petition arising from that petition.

(II) An aggravated juvenile offender thus committed to the department of human services shall not be transferred to a nonsecure or community setting for a period of more than forty-eight hours, excluding Saturdays, Sundays, and court holidays, nor released before the expiration of the determinate term imposed by the court without prior order of the court.

(b) (I) Upon court order, the department of human services may transfer a juvenile committed to its custody pursuant to paragraph (a) of this subsection (5) to the department of corrections if the juvenile has reached eighteen years of age and the department of human services has certified that the juvenile is no longer benefiting from its programs.

(II) Such transfer shall be initiated by the filing of a request by the department of human services for transfer with the court of commitment that shall state the basis for the request. Upon receipt of such a request, the court shall notify the interested parties and shall set the matter for a hearing.

(III) The court shall authorize such transfer only upon a finding by a preponderance of the evidence that the juvenile is no longer benefiting from the programs of the department of human services.

(IV) Upon entering an order of transfer to the department of corrections, pursuant to this paragraph (b), the court shall amend the mittimus and transfer all further jurisdiction

over the juvenile to the department of corrections. Thereafter the juvenile shall be governed by the provisions for adult felony offenders in titles 16 and 17, C.R.S., as if he or she had been sentenced as an adult felony offender for the unserved portion of sentence that remains upon transfer to the department of corrections.

(6) (a) After a juvenile who is sentenced pursuant to sub-subparagraph (B) or (C) of subparagraph (I) of paragraph (a) of subsection (5) of this section has been in the custody of the department of human services for three years or more, the department may petition the court for an order authorizing the department to place the juvenile on juvenile parole upon approval by the juvenile parole board pursuant to section 19-2-1002. After a juvenile who is sentenced pursuant to sub-subparagraph (A) of subparagraph (I) of paragraph (a) of subsection (5) of this section has served the minimum mandatory period of the commitment or three years, whichever is sooner, the department of human services may petition the court for an order authorizing the department to place the juvenile on juvenile parole upon approval by the juvenile parole board pursuant to section 19-2-1002. The parole supervision shall be conducted by the department of human services. Upon the filing of the petition, the court shall notify the interested parties and set the matter for a hearing. The court shall authorize the department of human services to place the juvenile on juvenile parole upon approval of the juvenile parole board pursuant to section 19-2-1002, only upon finding by a preponderance of the evidence that the safety of the community will not be jeopardized by such release.

(b) Parole supervision of a juvenile who has been transferred to the department of corrections is governed by the provisions for adult felony offenders in titles 16, 17, and 18, C.R.S., as if the juvenile had been sentenced as an adult felony offender; except that, if the juvenile was adjudicated and sentenced for murder in the first degree, then the juvenile shall serve a ten-year period of mandatory parole after completion of his or her sentence.

(7) Upon the filing of a petition with the committing court for transfer of the juvenile to a nonsecure or community setting, or for early release from the custody of the department of corrections or human services, the court shall notify the interested parties and set the matter for a hearing. The court shall order such transfer or release only upon a finding by a preponderance of the evidence that the safety of the community will not be jeopardized by such transfer or release; except that early release of the juvenile from the department of corrections shall be governed by the provisions for adult felony offenders in titles 16 and 17, C.R.S., as if the juvenile had been sentenced as an adult felony offender.

(8) (a) (I) When a juvenile in the custody of the department of human services pursuant to this section reaches the age of twenty years and six months, the department of human services shall file a motion with the court of commitment regarding further jurisdiction of the juvenile. Upon the filing of such a motion, the court shall notify the interested parties, appoint counsel for the juvenile, and set the matter for a hearing. The court shall, as part of this hearing, reconsider the length of the remaining sentence and consider the factors as set forth in paragraph (c) of this subsection (8) herein.

(II) When the court notifies the interested parties, the court shall order that the juvenile submit to and cooperate with a psychological evaluation and risk assessment by a mental health professional to determine whether the juvenile is a danger either to himself or herself or to others. The mental health professional shall prepare a written report and shall provide a copy of the report to the court that ordered it, the prosecuting attorney, and counsel for the juvenile at least fifteen days before the hearing.

(b) At the hearing upon the motion, the court may either transfer the custody of and jurisdiction over the juvenile to the department of corrections for placement in a correctional facility, the youthful offender system, or a community corrections program; authorize early release of the juvenile pursuant to subsection (7) of this section; place the juvenile on adult parole for a period of five years; or order that custody and jurisdiction over the juvenile shall remain with the department of human services; except that the custody of and jurisdiction over the juvenile by the department of human services shall terminate when the juvenile reaches twenty-one years of age.

(c) In considering whether or not to transfer the custody of and jurisdiction over the juvenile to the department of corrections, the court shall consider all relevant factors including, but not limited to, the court-ordered psychological evaluation and risk assess-

ment, the nature of the crimes committed, the prior criminal history of the offender, the maturity of the offender, the offender's behavior in custody, the offender's progress and participation in classes, programs, and educational improvement, the impact of the crimes on the victims, the likelihood of rehabilitation, the placement where the offender is most likely to succeed in reintegrating in the community, and the interest of the community in the imposition of punishment commensurate with the gravity of the offense.

(9) At any postadjudication hearing held pursuant to this section, the state shall be represented by the district attorney and by the attorney general; except that the attorney general may be excused from participation in the hearing with the permission of the district attorney and of the court. At any postadjudication hearing held pursuant to this section, the department of corrections shall be considered an interested party and shall be sent notice of such hearing.

(10) "Mental health professional" means a person who is employed by the department of human services or is employed under contract with the department of human services and is:

(a) A licensed physician with the appropriate training and expertise in psychiatry; or

(b) A licensed psychologist.

Source: L. 96: Entire article amended with relocations, p. 1646, § 1, effective January 1, 1997. **L. 99:** (5)(a)(I) and (6)(a) amended, p. 33, § 1, effective July 1. **L. 2008:** (6)(a) amended, p. 1105, § 11, effective July 1. **L. 2012:** (5)(a)(I)(D) and (10) added and (6)(b) and (8) amended, (HB 12-1310), ch. 268, p. 1413, § 39, effective June 7.

Editor's note: (1) This section was formerly numbered as 19-2-804 (2) to (10). Prior to relocation in 1996, the said section 19-2-804 (2) to (10) was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-103, 19-3-106.5, and 19-3-113.2 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-601 was relocated to section 19-2-902 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Although violent juvenile offender was granted four rather than the five peremptory challenges awarded to an aggravated juvenile offender, violent juvenile offender's right to equal protection was not violated where the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

PART 7

PREADJUDICATION

19-2-701. Short title. This part 7 shall be known and may be cited as "Juvenile Justice - Preadjudication".

Source: L. 96: Entire article amended with relocations, p. 1650, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-701 was relocated to section 19-2-906.

19-2-702. Mentally ill juvenile or juvenile with developmental disabilities - procedure. (Repealed)

Source: L. 96: Entire article amended with relocations, p. 1650, § 1, effective January 1, 1997. **L. 2002:** (1) amended, p. 577, § 9, effective May 24. **L. 2003:** (3)(c) amended, p. 1901, § 2, effective July 1. **L. 2005:** Entire section repealed, p. 1054, § 2, effective July 1.

19-2-703. Informal adjustment. (1) The district attorney may request of the court at any time, either before, during, or after the filing of a petition, that the matter be handled as an informal adjustment if:

(a) The juvenile and his or her parents, guardian, or legal custodian have been informed of their constitutional and legal rights, including the right to have counsel at every stage of the proceedings;

(b) There are sufficient facts to establish the jurisdiction of the court; and

(c) The juvenile and his or her parents, guardian, or legal custodian have waived the right to a speedy trial.

(2) An informal adjustment shall be for an initial period of no longer than six months. One additional extension of up to six months may be ordered by the court upon showing of good cause.

(3) During any informal adjustment, the court may place the juvenile under the supervision of the probation department or other designated agency. The court may require further conditions of conduct, as requested by the district attorney, probation department, or designated agency.

(4) No juvenile shall be granted an informal adjustment if such juvenile has been adjudicated a juvenile delinquent within the preceding twelve months, has had a prior deferred adjudication, or has had an informal adjustment granted within the preceding twelve months.

Source: L. 96: Entire article amended with relocations, p. 1651, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-302. Prior to relocation in 1996, the said section 19-2-302 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former provisions of section 19-2-703 were relocated to sections 19-2-907 and 19-2-910 to 19-2-919 when this article was amended with relocations in 1996.

19-2-704. Diversion. As an alternative to a petition filed pursuant to section 19-2-512, an adjudicatory trial pursuant to part 8 of this article, or disposition of a juvenile delinquent pursuant to section 19-2-907, the district attorney may agree to allow a juvenile to participate in a diversion program established in accordance with section 19-2-303.

Source: L. 96: Entire article amended with relocations, p. 1652, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-704 was relocated to section 19-2-921.

19-2-705. Preliminary hearing - dispositional hearing. (1) The district attorney or a juvenile who is accused in a petition of a delinquent act that constitutes a class 1, 2, or 3 felony may demand and receive a preliminary hearing to determine if there is probable cause to believe that the delinquent act alleged in the petition was committed by the juvenile. In addition, the district attorney or a juvenile who is accused in a petition of only those delinquent acts that constitute class 4, 5, or 6 felonies which felonies require mandatory sentencing or which constitute crimes of violence as defined in section 18-1.3-

406, C.R.S., or which constitute sexual offenses under part 4 of article 3 of title 18, C.R.S., may demand and receive a preliminary hearing to determine if there is probable cause to believe that the delinquent act alleged in the petition was committed by the juvenile. A preliminary hearing may be heard by a judge of the juvenile court or by a magistrate and shall be conducted as follows:

(a) At the juvenile's advisement hearing and after the filing of the delinquency petition, the prosecution shall make available to the juvenile the discovery material required by the Colorado rules of juvenile procedure. The juvenile or the prosecution may file a written motion for a preliminary hearing, stating the basis therefor. Upon the filing of the motion, the court shall forthwith set the matter for a hearing. The juvenile or the prosecution shall file a written motion for a preliminary hearing not later than ten days after the advisement hearing.

(b) If the juvenile is being detained because of the delinquent act alleged in the petition, the preliminary hearing shall be held within thirty days of the filing of the motion, unless good cause for continuing the hearing beyond that time is shown to the court. If the juvenile is not being detained, it shall be held as promptly as the calendar of the court permits.

(c) At the preliminary hearing, the juvenile shall not be called upon to plead, although the juvenile may cross-examine the prosecution witnesses and may introduce evidence in his or her own behalf. The prosecution shall have the burden of establishing probable cause. The court at the hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(d) If the court determines that probable cause exists, it shall enter a finding to that effect and shall schedule an adjudicatory trial. If from the evidence it appears to the court that probable cause does not exist, it shall dismiss the delinquency petition, and the juvenile shall be discharged from any restriction or other previous temporary order stemming from the petition.

(1.5) (a) The district attorney and the juvenile who is accused in a petition of a delinquent act that constitutes a class 4, 5, or 6 felony, except those that require mandatory sentencing or which constitute crimes of violence as defined in section 18-1.3-406, C.R.S., or which constitute sexual offenses under part 4 of article 3 of title 18, C.R.S., shall not have the right to demand or receive a preliminary hearing but shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution. Such dispositional hearing may be heard by a judge of the juvenile court or by a magistrate.

(b) Any juvenile accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing pursuant to paragraph (a) of this subsection (1.5), may demand and shall receive a preliminary hearing within a reasonable time pursuant to subsection (1) of this section, if the juvenile is in custody; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the juvenile has been released from custody prior to the preliminary hearing.

(2) A request for review of a preliminary hearing finding entered by a magistrate shall be filed pursuant to section 19-1-108 (5.5), and review shall be conducted pursuant to said section.

(3) The prosecution may file a motion to refile the petition in delinquency, which motion shall be accompanied by a verified affidavit stating the grounds therefor.

Source: L. 96: Entire article amended with relocations, p. 1652, § 1, effective January 1, 1997. **L. 98:** IP(1) amended and (1.5) added, p. 1274, § 3, effective July 1. **L. 2002:** IP(1) and (1.5)(a) amended, p. 1527, § 230, effective October 1. **L. 2007:** (2) amended, p. 2029, § 37, effective July 1.

Editor's note: (1) This section was formerly numbered as 19-2-404. Prior to relocation in 1996, the said section 19-2-404 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-102.1 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-705 was relocated to section 19-2-925 when this article was amended with relocations in 1996.

Cross references: For the legislative declaration contained in the 2002 act amending the introductory portion to subsection (1) and subsection (1.5)(a), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Detained juvenile entitled to preliminary hearing. A juvenile who is detained is entitled to a preliminary hearing by constitutional mandate. The right to a preliminary hearing in all other instances is based upon interpretation of the Colorado Children's Code and the Colorado rules of juvenile procedure. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

When juvenile entitled to preliminary hearing. Juveniles charged in delinquency proceedings with crimes (felonies and class 1 misdemeanors) subject to Crim. P. 5 and 7 are entitled to a preliminary hearing. Juveniles held on lesser charges are not granted a right to a preliminary hearing by statute or by rule. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Former § 19-3-103 (1)(d) gave juvenile courts limited discretion to conduct a preliminary hearing on the issue of probable cause to charge a juvenile suspect. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Distinction is constitutional. Distinguishing between detained and nondetained juvenile suspects and between juveniles charged with committing serious offenses and juveniles charged with committing other offenses for the purpose of determining whether a preliminary hearing is required is a reasonable and rational distinction. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Preliminary hearings. Section 19-3-101 (1)(d) gives the juvenile courts limited discretion to conduct a preliminary hearing on the issue of probable cause to charge a juvenile suspect. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Distinguishing between detained and nondetained juvenile suspects and between juveniles charged with committing serious offenses and juveniles charged with committing other offenses for the purpose of determining whether a preliminary hearing is required is a reasonable and rational distinction. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Granting a motion to dismiss and denying a motion to refile a juvenile delinquency is within the discretion of the court. People in Interest of D.J.P., 785 P.2d 129 (Colo. 1990).

Failure of prosecution to subpoena witness or to show necessity for the testimony of such witness is sufficient to deny prosecution motion to continue and to dismiss the action. People in Interest of D.J.P., 785 P.2d 129 (Colo. 1990).

19-2-706. Advisement. (1) At the first appearance before the court after the filing of a petition, the juvenile and his or her parents, guardian, or other legal custodian shall be advised by the court of their constitutional and legal rights as set forth in rule 3 of the Colorado rules of juvenile procedure. Such advisement shall include the possibility of restorative justice practices, including victim-offender conferences if applicable. The advisement regarding restorative justice practices does not establish any right to restorative justice practices on behalf of the juvenile, and failure to provide an advisement regarding restorative justice practices does not constitute any legal error by the court.

(2) (a) If the juvenile or his or her parents, guardian, or other legal custodian requests counsel and the juvenile or his or her parents, guardian, or other legal custodian is found to be without sufficient financial means, or the juvenile's parents, guardian, or other legal custodian refuses to retain counsel for said juvenile, the court shall appoint counsel for the juvenile.

(b) If the court appoints counsel for the juvenile because of the refusal of the parents, guardian, or other legal custodian to retain counsel for the juvenile, the parents, guardian, or legal custodian, other than a county department of social services or the department of human services, shall be ordered to reimburse the court for the cost of the counsel unless the court finds there was good cause for such refusal.

(c) The court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the juvenile or of other parties.

(d) The appointment of counsel pursuant to this subsection (2) shall continue until such time as the court's jurisdiction is terminated or until such time as the court finds that the

juvenile or his or her parents, guardian, or other legal custodian has sufficient financial means to retain counsel or that the juvenile's parents, guardian, or other legal custodian no longer refuses to retain counsel for the juvenile.

Source: L. 96: Entire article amended with relocations, p. 1653, § 1, effective January 1, 1997. **L. 2008:** (1) amended, p. 226, § 3, effective March 31. **L. 2011:** (1) amended, (HB 11-1032), ch. 296, p. 1405, § 12, effective August 10.

Editor's note: (1) This section was formerly numbered as 19-2-402. Prior to relocation in 1996, the said section 19-2-402 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-706 was relocated to section 19-2-308 when this article was amended with relocations in 1996.

19-2-707. Mandatory protection order. (1) (a) There is hereby created a mandatory protection order against any juvenile charged with the commission of a delinquent act and the juvenile's parents or legal guardian, which order shall remain in effect from the time that the juvenile is advised of such juvenile's rights and informed of such order at such juvenile's first appearance before the court until final disposition of the action or, in the case of an appeal, until disposition of the appeal. Such order shall restrain the juvenile and the juvenile's parents or legal guardian from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the delinquent act charged.

(b) Repealed.

(c) The protection order issued pursuant to this section shall be on a standardized form prescribed by the judicial department, and a copy shall be provided to the protected parties.

(2) At the time of the juvenile's first appearance before the court, the court shall inform the juvenile and the juvenile's parents or legal guardian of the protection order effective pursuant to this section and shall also inform the juvenile and the juvenile's parents or legal guardian that a violation of such order is punishable as contempt of court.

(3) Nothing in this section shall preclude the juvenile or the juvenile's parents or legal guardian from applying to the court at any time for modification or dismissal of the protection order issued pursuant to this section or the district attorney from applying to the court at any time for additional provisions under the protection order, modification of the order, or dismissal of the order. The trial court shall retain jurisdiction to enforce, modify, or dismiss the protection order during the pendency of any appeal that may be brought.

(4) The duties of peace officers enforcing orders issued pursuant to this section shall be in accordance with section 18-6-803.5, C.R.S., and any rules adopted by the Colorado supreme court pursuant to said section.

Source: L. 96: Entire article amended with relocations, p. 1654, § 1, effective January 1, 1997. **L. 99:** (1)(b) amended, p. 503, § 13, effective July 1. **L. 2000:** (1)(b) repealed, p. 1015, § 9, effective July 1. **L. 2003:** (1), (2), and (3) amended, p. 1015, § 24, effective July 1.

Editor's note: (1) This section was formerly numbered as 19-2-403. Prior to relocation in 1996, the said section 19-2-403 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-103.1 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-707 was relocated to section 19-2-112 when this article was amended with relocations in 1996.

19-2-708. Entry of plea. (1) Upon the entry of a plea of not guilty to the allegations contained in the petition, the court shall set the matter for an adjudicatory trial. Except as otherwise provided in section 19-2-107, the court shall hold the adjudicatory trial within sixty days following the entry of a plea of not guilty.

(2) Upon the entry of a plea of guilty to one or more of the allegations contained in the petition, the court shall advise the juvenile in accordance with rule 3 of the Colorado rules of juvenile procedure. Such advisement shall include the possibility of restorative justice practices, including victim-offender conferences if applicable. The advisement regarding restorative justice practices does not establish any right to restorative justice practices on behalf of the juvenile, and failure to provide an advisement regarding restorative justice practices does not constitute any legal error by the court.

Source: L. 96: Entire article amended with relocations, p. 1654, § 1, effective January 1, 1997. **L. 2008:** (2) amended, p. 227, § 4, effective March 31. **L. 2011:** (2) amended, (HB 11-1032), ch. 296, p. 1405, § 13, effective August 10.

Editor's note: This section was formerly numbered as 19-2-405 and the former section 19-2-708 was relocated to section 19-2-309.

ANNOTATION

Failure to request dismissal on speedy trial grounds before the beginning of adjudicatory trial will result in the waiver of speedy trial rights under this section. People ex rel. J.M.N., 39 P.3d 1261 (Colo. App. 2001).

19-2-709. Deferral of adjudication. (1) Except as otherwise provided in subsection (1.5) of this section, in any case in which the juvenile has agreed with the district attorney to enter a plea of guilty, the court, with the consent of the juvenile and the district attorney, upon accepting the guilty plea and entering an order deferring adjudication, may continue the case for a period not to exceed one year from the date of entry of the order deferring adjudication. The court may continue the case for an additional one-year period for good cause.

(1.5) In a case in which the juvenile has agreed with the district attorney to enter a plea of guilty, resulting in a conviction as defined in section 16-22-102 (3), C.R.S., for unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., the court, with the consent of the juvenile and district attorney, upon accepting the guilty plea and entering an order deferring adjudication, may continue the case for a period of time not to exceed two years from the date of the order deferring adjudication. Upon a showing of good cause, the court may continue the case for additional time, not to exceed five years from the date of the order deferring adjudication.

(2) Any juvenile granted a deferral of adjudication under this section may be placed under the supervision of a probation department. The court may impose any conditions of supervision that it deems appropriate that are stipulated to by the juvenile and the district attorney.

(3) Upon full compliance with such conditions of supervision, the plea of the juvenile or the finding of guilt by the court shall be withdrawn and the case dismissed with prejudice.

(4) If the juvenile fails to comply with the terms of supervision, the court shall enter an order of adjudication and proceed to sentencing under section 19-2-906. Such lack of compliance shall be a matter to be determined by the court without a jury, upon written application of the district attorney or probation department. At least five days' notice shall be given to the juvenile and his or her parents, guardian, or legal custodian. The burden of proof shall be the same as if the matter were being heard as a probation revocation proceeding.

(5) If the juvenile agrees to a deferral of adjudication, he or she waives all rights to a speedy trial and sentencing.

Source: L. 96: Entire article amended with relocations, p. 1655, § 1, effective January 1, 1997. **L. 2012:** (1) amended and (1.5) added, (HB 12-1310), ch. 268, p. 1399, § 18, effective June 7.

Editor's note: This section was formerly numbered as 19-2-702.

ANNOTATION

Subsection (1) unambiguously conditions the trial court's power to defer a juvenile's sentence upon the concurrence of the prosecuting attorney. People in Interest of R.W.V., 942 P.2d 1317 (Colo. App. 1997).

Requirement for prosecution's approval of a deferred sentence does not impermissibly interfere with the judiciary's sentencing authority. People in Interest of R.W.V., 942 P.2d 1317 (Colo. App. 1997).

19-2-709.5. Implementation committees - repeal. (Repealed)

Source: L. 2008: Entire section added, p. 346, § 1, effective July 1.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2011. (See L. 2008, p. 346.)

19-2-710. Mental health services for juvenile - how and when issue raised - procedure - definitions. (1) At any stage of a delinquency proceeding, if the court, prosecution, probation officer, guardian ad litem, parent, or legal guardian has reason to believe that the juvenile could benefit from mental health services, the party shall immediately advise the court of such belief.

(2) After the party advises the court of the party's belief that the juvenile could benefit from mental health services, the court shall immediately order a mental health screening of the juvenile pursuant to section 16-11.9-102, C.R.S., unless the court already has sufficient information to determine whether the juvenile could benefit from mental health services or unless a mental health screening of the juvenile has been completed within the last three months. The delinquency proceedings shall not be stayed or suspended pending the results of the mental health screening ordered pursuant this section, however, the court may continue the dispositional and sentencing hearing to await the results of the mental health screening.

(3) If the mental health screening indicates that the juvenile could benefit from mental health services, the court may order a mental health assessment.

(4) At the time the court orders a mental health assessment, the court shall specify the date upon which the assessment shall be completed and returned to the court. The court may assign responsibility for the cost of the assessment to any party having legal custody or legal guardianship of the juvenile.

(5) The assessment, at a minimum, shall include an opinion regarding whether the juvenile could benefit from mental health services. If the assessment concludes that the juvenile could benefit from mental health services, the assessment shall identify the juvenile's mental health issues and the appropriate services and treatment.

(6) Evidence or treatment obtained as a result of a mental health screening or assessment ordered pursuant to this section shall not be admissible on the issues raised by a plea of not guilty unless the juvenile places his or her mental health at issue. If the juvenile places his or her mental health at issue, then either party may introduce evidence obtained as a result of a mental health screening or assessment.

(7) For purposes of this section:

(a) "Assessment" means an objective process used to collect pertinent information in order to identify a juvenile who may have mental health needs.

(b) "Juvenile could benefit from mental health services" means a juvenile exhibits one or more of the following characteristics:

(I) A chronic or significant lack of impulse control or of judgment;

(II) Significant abnormal behaviors under normal circumstances;

(III) A history of suspensions, expulsions, or repeated truancy from school settings;

(IV) Severe or frequent changes in sleeping or eating patterns or in levels of activity;

(V) A pervasive mood of unhappiness or of depression; or

(VI) A history of involvement with, or treatment in, two or more state or local governmental agencies, including but not limited to juvenile justice, youth corrections, or child welfare.

(8) Repealed.

Source: L. 2008: Entire section added, p. 346, § 1, effective July 1.

Editor's note: Subsection (8)(b) provided for the repeal of subsection (8), effective July 1, 2011. (See L. 2008, p. 346.)

PART 8

ADJUDICATORY PROCEDURES

19-2-801. Short title. This part 8 shall be known and may be cited as "Adjudicatory Procedures".

Source: L. 96: Entire article amended with relocations, p. 1655, § 1, effective January 1, 1997.

Editor's note: The provisions of former section 19-2-801 were relocated to sections 19-2-516 and 19-2-908. Prior to relocation in 1996, this section was contained in an article that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-103 as said section existed in 1986, the year prior to the repeal and reenactment of this article.

19-2-802. Evidentiary considerations. (1) All statutes and rules of this state that apply to evidentiary considerations in adult criminal proceedings shall apply to proceedings under this title except as otherwise specifically provided.

(2) In any case brought under this title, the credibility of any witness may be challenged because of his or her prior adult felony convictions and juvenile felony adjudications. The fact of such conviction or adjudication may be proved either by the witness through testimony or by other competent evidence.

(3) Prior to the juvenile resting his or her case, the trial court shall advise the juvenile outside the presence of the jury that:

(a) He or she has a right to testify in his or her own behalf;

(b) If he or she wants to testify, no one, including his or her attorney, can prevent the juvenile from doing so;

(c) If he or she testifies, the prosecutor will be allowed to cross-examine him or her;

(d) If he or she has been convicted or adjudicated for a felony, the prosecutor shall be entitled to ask him or her about it and thereby disclose it to the jury;

(e) If a felony conviction or adjudication is disclosed to the jury, the jury can be instructed to consider it only as it bears upon his or her credibility;

(f) He or she has a right not to testify and that, if he or she does not testify, the jury shall be instructed about such right.

Source: L. 96: Entire article amended with relocations, p. 1655, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-505. Prior to relocation in 1996, the said section 19-2-505 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The provisions of former section 19-2-802 were relocated to sections 19-2-516 and 19-2-908 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Evidentiary provisions of the Colorado Children's Code are no longer applicable once case is transferred to district court. Trial court erred in ruling that if defendant were to testify in his own defense in district court, his prior juvenile adjudication may be used to impeach him. People v. Armand, 873 P.2d 7 (Colo. App. 1993).

Serious constitutional concerns would result if district court were to apply the provisions of the Colorado Children's Code to a case that was first initiated under the code and then transferred to district court. Adult could not be impeached with a juvenile adjudication but juvenile tried as an adult could. People v. Armand, 873 P.2d 7 (Colo. App. 1993).

19-2-803. Legislative declaration - admissibility of evidence. (1) It is hereby declared to be the intent of the general assembly that, when evidence is sought to be excluded from the trier of fact in a delinquency proceeding because of the conduct of a peace officer leading to its discovery, such evidence should not be suppressed if otherwise admissible when the proponent of the evidence can show that the conduct in question was taken in a reasonable, good faith belief that it was proper. It is further declared to be the intent of the general assembly to identify the characteristics of admissible evidence and not to address or attempt to prescribe court procedure.

(2) For purposes of this section:

(a) "Good faith mistake" is defined in section 19-1-103 (53).

(b) "Peace officer" has the meaning set forth in section 16-2.5-101, C.R.S.

(c) "Technical violation" is defined in section 19-1-103 (105).

(3) Evidence sought to be excluded in a delinquency proceeding because of the conduct of the peace officer leading to its discovery shall not be suppressed by the court if the court finds that the evidence was seized by the peace officer as a result of a good faith mistake or a technical violation and the evidence is otherwise admissible.

(4) Evidence that is obtained as a result of a confession voluntarily made in a noncustodial setting shall not be suppressed by the court in a delinquency proceeding if it is otherwise admissible.

(5) It shall be prima facie evidence that the conduct of the peace officer was taken in the reasonable good faith belief that it was proper if there is a showing that the evidence was obtained pursuant to and within the scope of a warrant, unless the warrant was obtained through intentional and material misrepresentation.

Source: L. 96: Entire article amended with relocations, p. 1656, § 1, effective January 1, 1997. **L. 2003:** (2)(b) amended, p. 1616, § 17, effective August 6.

Editor's note: (1) This section was formerly numbered as 19-2-209. Prior to relocation in 1996, the said section 19-2-209 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-2-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The provisions of former section 19-2-803 were relocated to sections 19-2-516 and 19-2-908 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (4) of this section and former § 19-2-208 (now § 19-2-506) contain proper test to measure validity of consent to search given by juvenile in noncustodial setting. People in Interest of S.J., 778 P.2d 1384 (Colo. 1989).

19-2-804. Procedures at trial. (1) At the adjudicatory trial, which shall be conducted as provided in section 19-1-106, the court shall consider whether the allegations of the

petition are supported by evidence beyond a reasonable doubt. Jurisdictional matters of the age and residence of the juvenile shall be deemed admitted by or on behalf of the juvenile unless specifically denied within a reasonable time prior to the trial.

(2) If the juvenile is found not guilty after an adjudicatory trial, the court shall order the petition dismissed and the juvenile discharged from any detention or restriction previously ordered. The juvenile's parents, guardian, or other legal custodian shall also be discharged from any restriction or other previous temporary order.

(3) If the juvenile is found guilty after an adjudicatory trial, the court may proceed to sentencing or direct that the matter be set for a separate sentencing hearing within forty-five days following completion of the adjudicatory trial.

Source: L. 96: Entire article amended with relocations, p. 1656, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-504. Prior to relocation in 1996, the said section 19-2-504 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The provisions of the former section 19-2-804 were relocated to sections 19-2-516 and 19-2-601 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Although proceedings under the Colorado Children's Code are civil in nature, a respondent child in such proceedings is entitled to certain of the constitutional safeguards which are afforded in criminal prosecutions. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

Child who is subject of petition for adjudication as delinquent is entitled to constitutional protections afforded adult defendant in criminal case. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Term "order of adjudication" refers only to orders by which a child is decreed to be delinquent, in need of supervision, or neglected or dependent and does not include orders for revocation of probation. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

C.R.J.P. 8(e) not superceded. This special statutory procedure for waiving jurisdiction of the juvenile court does not supercede C.R.J.P. 8(e). People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980).

Waiver of jurisdiction not final disposition of action. It is evident from the provisions of this section and §§ 19-3-108 (4) and 19-3-109 that an order of the juvenile division of the district court waiving jurisdiction is not a final disposition of the action. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

When proof beyond reasonable doubt required. Due process and fair treatment require proof beyond a reasonable doubt during the adjudicatory state when a juvenile is charged with an act which would constitute a crime if committed by an adult. D.W. v. Dist. Court, 193 Colo. 194, 564 P.2d 949 (1976).

Right of alleged delinquent to testify as to criminal intent. Where intent is a material element of the crime charged, a child alleged to be delinquent, grounded on an alleged theft, has the right to testify specifically as to intention in the commission of the acts. People in Interest of J.S.C. v. J.S.C., 30 Colo. App. 381, 493 P.2d 671 (1972).

Court may continue adjudicatory hearing without making an adjudication and may impose certain conditions of conduct under this section, as distinguished from probation under § 19-3-113 (former § 19-2-703). People in Interest of F.D., 735 P.2d 496 (Colo. App. 1987).

An adjudication of delinquency is sufficient to establish a conclusive presumption of intent when intent is an element of the offense, because the adjudication requires a higher burden of proof and provides constitutional protections not available in most civil cases. Swentkowski v. Dawson, 881 P.2d 437 (Colo. App. 1994).

The standards for reviewing the sufficiency of evidence supporting a judgment of juvenile delinquency are the same as those applied in a criminal case. The reviewing court must determine whether the evidence, viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable person that the defendant is guilty of the crime charged beyond a reasonable doubt. People ex rel. J.M.N., 39 P.3d 1261 (Colo. App. 2001); People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

Evidence held sufficient. In a proceeding to declare children delinquent, evidence held legally sufficient to warrant a finding that the children were delinquent. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Evidence held insufficient. Evidence held clearly insufficient to support court's finding that minor was a "delinquent child". Carmean v. People, 110 Colo. 399, 134 P.2d 1056 (1943).

Where a minor child aged 16 was alleged to be a delinquent, grounded on the allegation that he had committed an assault and battery, but at the close of the evidence presented by the people, the court ruled that the evidence presented was not sufficient to sustain the allegations of the petition and entered a judgment of acquittal, on appeal by the people it was held that the case was moot. The minor had been acquitted of the charge contained in the petition and could not again be put in jeopardy for this offense. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

A minute order can be effective as a written order or judgment when the parties to an action attend a hearing concerning the subject matter of the order and understand the substantive content of the decision represented by the minute order. Wesson v. Bowling, 199 Colo. 30, 604 P.2d 23 (1979); People v. Easter, 914 P.2d 493 (Colo. App. 1995).

Under the plain language of subsection (6)(a), a written order would include any direction of the court reduced to written form such as a written directive for transfer to the adult court and assigning a criminal action number to the case. People v. Easter, 914 P.2d 493 (Colo. App. 1995).

The written minute order waiving juvenile court jurisdiction triggered the requirement for the prosecution to file an information in district court within five days of the issuance of the order and, since the time limit is mandatory and jurisdictional, the prosecution's failure to file an information within that time limit rendered the waiver null and void and the juvenile court was required to retain jurisdiction. People v. Easter, 914 P.2d 493 (Colo. App. 1995).

The later issuance of a second written order by the juvenile court judge cannot correct the prosecution's failure initially to file the information and is not permitted under the mandatory language of subsection (6)(a). People v. Easter, 914 P.2d 493 (Colo. App. 1995).

19-2-805. Method of jury selection. Examination and selection of jurors shall be as provided by rule 47 of the Colorado rules of civil procedure; except that challenges for cause shall be as provided by rule 24 of the Colorado rules of criminal procedure.

Source: L. 96: Entire article amended with relocations, p. 1657, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-503 and the former section 19-2-805 was relocated to section 19-2-517.

PART 9

POSTADJUDICATORY PROCESS

Law reviews: For article, "The Overincarceration Rate of Minority Youth: A Judicial Response", see 19 Colo. Law. 1819 (1990).

19-2-901. Short title. This part 9 shall be known and may be cited as "Postadjudicatory Process".

Source: L. 96: Entire article amended with relocations, p. 1657, § 1, effective January 1, 1997.

19-2-902. Motion for new trial. (1) All motions for a new trial shall be made pursuant to rule 33 of the Colorado rules of criminal procedure.

(2) If the juvenile was not represented by counsel, the court shall inform the juvenile and his or her parent, guardian, or legal custodian at the conclusion of the trial that they have the right to file a motion for a new trial and that, if such motion is denied, they have the right to appeal.

Source: L. 96: Entire article amended with relocations, p. 1657, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-601. Prior to relocation in 1996, the said section 19-2-601 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-106 and 19-3-116, as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-902 was relocated to section 19-1-306 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Standing to appear. The Colorado Children's Code has not changed the basic law of the state that a grandparent to whom the child has been entrusted for care has status to appear and protest the actions of the court relative to the child. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Petition for new trial proper. In a proceeding under the Colorado Children's Code, where it was argued that the petition for new trial and demand for jury trial were filed too late, and thus were not in accordance with C.R.C.P. 59(b), this argument was rejected since according to the record there had never been any trial held or evidence presented in support of the dependency petition, and hence, no violation of C.R.C.P. 59(b) could have occurred. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Failure to move for a new hearing pursuant to this section does not preclude consideration as to whether an illegal sentence has been imposed pursuant to Crim. P. 35(a). People v. T.O., 696 P.2d 811 (Colo. 1985).

19-2-903. Appeals. (1) Appellate procedure shall be provided by the Colorado appellate rules. Initials shall appear on the record on appeal in place of the name of the juvenile and other respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(2) The prosecution in a delinquency case may appeal any decision of the trial court as provided in section 16-12-102, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1657, § 1, effective January 1, 1997.

Editor's note: (1) This section was formerly numbered as 19-2-602. Prior to relocation in 1996, the said section 19-2-602 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-112, as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The former section 19-2-903 was relocated to section 19-2-111 when this article was amended with relocations in 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Juvenile delinquency cases may be appealed to the supreme court after trial. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

An interlocutory appeal is not available to either the state or the respondent in a delinquency proceeding under the Colorado Children's Code. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

Neither the state nor the respondent can prosecute interlocutory appeals in delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

C.A.R. 4.1 does not apply. C.A.R. 4.1 cannot be stretched to permit an interlocutory appeal in a delinquency proceeding without doing violence to the distinction carefully drawn by the supreme court between a criminal proceeding and a proceeding in delinquency. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

C.A.R. 4.1, which authorizes certain interlocutory appeals in criminal cases, has no application to delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

Application of C.A.R. 1(a)(1). Delinquency proceedings are no less subject to the finality requirements of C.A.R. 1(a)(1) than any other

type of proceeding. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Applied in People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979).

19-2-904. Posttrial bail. A juvenile's application for posttrial bail shall be governed by part 2 of article 4 of title 16, C.R.S., and the provisions concerning bail in section 19-2-509.

Source: L. 96: Entire article amended with relocations, p. 1657, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-603 and the former section 19-2-904 was relocated to section 19-2-110.

19-2-905. Presentence investigation. (1) (a) Prior to the sentencing hearing, the juvenile probation department for the judicial district in which the juvenile is adjudicated shall conduct a presentence investigation unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The presentence investigation shall take into consideration and build on the intake assessment performed by the screening team. The presentence investigation may address, but is not limited to, the following:

(I) The details of the offense;

(II) Statements made by the victims of the offense;

(III) The amount of restitution, if any, that should be imposed on the juvenile or the juvenile's parent, guardian, or legal custodian;

(IV) The juvenile's previous criminal record, if any, if the juvenile has not been adjudicated for an act that constitutes unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S.;

(V) Any history of substance abuse by the juvenile;

(VI) The juvenile's education history, including any special education history and any current individualized education program the juvenile may have pursuant to section 22-20-108, C.R.S.;

(VI.5) The juvenile's employment history;

(VII) The juvenile's family;

(VIII) The juvenile's peer relationships;

(IX) The status of juvenile programs and community placements in the juvenile's judicial district of residence;

(X) Other related material;

(XI) Review of placement and commitment criteria adopted pursuant to section 19-2-212, which shall be the criteria for any sentencing recommendations included in the presentence investigation;

(XII) Assessment of the juvenile's needs; and

(XIII) Recommendations and a proposed treatment plan for the juvenile.

(b) If the juvenile has been adjudicated for an act that constitutes unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., then the report on the presentence investigation shall include the juvenile's previous criminal and juvenile delinquency records, if any.

(2) The probation department shall conduct a presentence investigation in each case unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The level of detail included in the presentence investigation may vary, as appropriate, with the services being considered for the juvenile.

(3) (a) The state court administrator may implement a mental illness screening program to be used by the juvenile court. If the state court administrator chooses to implement a mental illness screening program, the juvenile court shall use the standardized mental illness screening developed pursuant to section 16-11.9-102, C.R.S., and conduct the screening in accordance with the procedures established pursuant to said section. The findings and results of any standardized mental illness screening conducted pursuant to this

subsection (3) shall be included in the written report to the court prepared and submitted pursuant to this section.

(b) Prior to implementation of a mental illness screening program pursuant to this subsection (3), if implementation of the program would require an increase in appropriations, the state court administrator shall submit to the joint budget committee a request for funding in the amount necessary to implement the mental illness screening program. If implementation of the mental illness screening program would require an increase in appropriations, implementation of the program shall be conditional upon approval of the funding request.

(4) Prior to sentencing a juvenile who was adjudicated for an offense that would be a felony or misdemeanor not contained in title 42, C.R.S., if committed by an adult, the court, upon the request of the victim, may order the juvenile to participate in an assessment to determine whether the juvenile would be suitable for participation in restorative justice practices that would be a part of the juvenile's sentence; except that the court may not order participation in a restorative justice practice if the juvenile was adjudicated a delinquent for unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1), C.R.S., stalking as defined in section 18-3-602, C.R.S., or violation of a protection order as defined in section 18-6-803.5, C.R.S. If the court orders a suitability assessment, the assessor shall provide the services for a fee of no more than forty dollars based on a sliding scale; however, the fee may be waived by the court. If the juvenile participates in a restorative justice practices victim-offender conference, the facilitator shall provide these services for a fee of no more than one hundred twenty-five dollars based on a sliding scale; however, the fee may be waived by the court.

Source: L. 96: Entire article amended with relocations, p. 1658, § 1, effective January 1, 1997. **L. 99:** (1) amended, p. 314, § 1, effective July 1. **L. 2002:** (3) added, p. 578, § 10, effective May 24; (1)(a)(IV) and (1)(b) amended, p. 1187, § 25, effective July 1. **L. 2003:** (1)(a) amended, p.1807, § 3, effective August 6. **L. 2011:** (4) added, (HB 11-1032), ch. 296, p. 1406, § 14, effective August 10.

ANNOTATION

Law reviews. For article, "The Mandate to Use Special Education at Juvenile Delinquency Sentencings", see 32 Colo. Law. 99 (October 2003).

19-2-906. Sentencing hearing. (1) (a) After making a finding of guilt, the court shall hear evidence on the question of the proper disposition best serving the interests of the juvenile and the public. Such evidence shall include, but not necessarily be limited to, the social study and other reports as provided in section 19-1-107.

(b) In those cases in which the juvenile is adjudicated a juvenile delinquent for an act that constitutes unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., the court shall consider the juvenile's previous criminal and juvenile delinquency records, if any, set forth in the presentence investigation report prepared pursuant to section 19-2-905 (1) (b) in determining the proper disposition for the juvenile and the public.

(2) If the court has reason to believe that the juvenile may have a developmental disability, the court shall refer the juvenile to the community centered board in the designated service area where the action is pending for an eligibility determination pursuant to article 10.5 of title 27, C.R.S. If the court has reason to believe that the juvenile may have a mental illness, the court shall order a mental health hospital placement prescreening to be conducted in any appropriate place.

(2.5) (a) If the court receives a mental health screening or mental health assessment pursuant to section 19-2-710 determining that the juvenile could benefit from mental health services, or the court already has sufficient information to determine that the juvenile could benefit from mental health services, the court may order mental health services as a part of the disposition.

(b) Repealed.

(3) (a) The court may continue the sentencing hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence; except that the court shall determine sentencing within forty-five days following completion of the adjudicatory trial.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the juvenile or for his or her release in the custody of his or her parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a juvenile who is in detention or who has otherwise been removed from his or her home before an order of disposition has been made.

(4) In any case in which the sentence is placement out of the home, except for juveniles committed to the department of human services, the court shall, at the time of placement, set a review within ninety days to determine if continued placement is necessary and is in the best interest of the juvenile and of the community. Notice of said review shall be given by the court to all parties and to the director of the facility or agency in which the juvenile is placed and any person who has physical custody of the juvenile and any attorney or guardian ad litem of record.

Source: L. 96: Entire article amended with relocations, p. 1659, § 1, effective January 1, 1997. **L. 99:** (1) amended, p. 315, § 2, effective July 1. **L. 2002:** (2) amended, p. 578, § 11, effective May 24; (1)(b) amended, p. 1188, § 26, effective July 1. **L. 2006:** (2) amended, p. 1401, § 54, effective August 7. **L. 2008:** (2.5) added, p. 348, § 2, effective July 1.

Editor's note: (1) This section was formerly numbered as § 19-2-701. Prior to relocation in 1996, the said § 19-2-701 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in § 19-3-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (2.5)(b)(II) provided for the repeal of subsection (2.5)(b), effective July 1, 2011. (See L. 2008, p. 348.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Court's disposition of case must consider both the child's best interests and society's best interests. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987).

State is an "interested party". The state of Colorado, through its representative, the district attorney, is an "interested party" at the dispositional stage of a delinquency proceeding, as the same factors which establish the state's status as an interested party at the adjudicatory stage of the delinquency proceeding are equally applicable to the dispositional stage. People in Interest of R.M.S., 651 P.2d 377 (Colo. 1982).

Hearing not required for revocation of probation. Where hearing emanated from petition to revoke probation of child and not from petition for either delinquency adjudication or in need of supervision, child was not entitled to dispositional hearing and social study. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Rules of evidence not controlling. Information which will assist the court in determining the disposition, or upon which the court relies in fashioning conditions of probation, can be obtained by the court in a variety of ways, none of which need comply with the rules of evidence. John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965).

Trial court's failure to sentence juvenile within 45 days after adjudication pursuant to subsection (3)(a) entitles juvenile to credit for pre-sentence confinement for the period following the expiration of the 45-day sentencing deadline until the date of sentencing. The trial court retains discretion as to whether to grant pre-sentence confinement credit for any confinement from the date of adjudication until the expiration of the 45-day sentencing deadline. People ex rel. J.R., 216 P.3d 1220 (Colo. App. 2009).

19-2-906.5. Orders - community placement - reasonable efforts required - reviews. (1) If the court orders legal custody of a juvenile to a county department of social services

pursuant to the provisions of this article, said order shall contain specific findings as follows:

(a) Whether placement of the juvenile out of the home would be in the juvenile's and the community's best interests; and

(b) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home, whether it is reasonable that such efforts are not made because an emergency situation exists that requires the immediate removal of the juvenile from the home, or whether such efforts are not required because of circumstances described in section 19-1-115 (7).

(c) (Deleted by amendment, L. 2006, p. 508, § 3, effective April 18, 2006.)

(1.5) For all hearings and reviews concerning the juvenile, the court shall ensure that notice is provided to the juvenile and to the following persons with whom the juvenile is placed:

(a) Foster parents;

(b) Pre-adoptive parents; or

(c) Relatives.

(2) (a) Every six months after the sentencing hearing provided in section 19-2-906, the court shall hold a hearing to review any order of community placement or, if there is no objection by any party to the action, the court may require the department of human services to conduct an administrative review. The entity scheduling the review shall provide notice of the review to the juvenile, the juvenile's parents or guardian, any service providers working with the juvenile, the juvenile's guardian ad litem, if one has been appointed, and all attorneys of record to allow appearances of any of said persons at the review. At the review conducted pursuant to this subsection (2), the reviewing entity shall determine:

(I) Whether continued community placement is in the best interests of the juvenile and the community;

(II) Whether the juvenile's safety is protected in the community placement;

(III) Whether reasonable efforts have been made to return the juvenile to the home or whether the juvenile should be permanently removed from his or her home;

(IV) Whether continued community placement is necessary and appropriate;

(V) Whether there has been compliance with the juvenile's case plan;

(VI) Whether progress has been made toward alleviating or mitigating the causes that necessitated the community placement; and

(VII) Whether there is a date projected by which the juvenile will be returned and safely maintained in his or her home, placed for legal guardianship, or placed in a planned permanent living arrangement.

(b) If the juvenile resides in a placement out of state, the entity conducting the review shall make a determination that the out-of-state placement continues to be appropriate and in the best interests of the juvenile.

(c) (Deleted by amendment, L. 2001, p. 844, § 5, effective June 1, 2001.)

(3) (a) If the juvenile is in the legal custody of a county department of social services and is placed in a community placement for a period of twelve months or longer, the district court, another court of competent jurisdiction, or an administrative body appointed or approved by the court that is not under the supervision of the department shall conduct a permanency hearing within said twelve months and every twelve months thereafter for as long as the juvenile remains in community placement. At the permanency hearing, the entity conducting the hearing shall make the following determinations:

(I) Whether continued community placement is in the best interests of the juvenile and the community;

(II) Whether the juvenile's safety is protected in the community placement;

(III) Whether reasonable efforts have been made to finalize the juvenile's permanency plan that is in effect at that time;

(IV) Whether continued community placement is necessary and appropriate;

(V) Whether there has been compliance with the juvenile's case plan;

(VI) Whether progress has been made toward alleviating or mitigating the causes that necessitated the community placement;

(VII) Whether there is a date projected by which the juvenile will be returned and safely maintained in his or her home, placed for legal guardianship, or placed in a planned permanent living arrangement; and

(VIII) Whether procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's community placement, or any determination affecting parental visitation.

(b) If the juvenile resides in a placement out of state, the entity conducting the review shall make a determination that the out-of-state placement continues to be appropriate and in the best interests of the juvenile.

(c) (Deleted by amendment, L. 2001, p. 844, § 5, effective June 1, 2001.)

(d) The entity conducting the permanency hearing shall consult with the juvenile, in an age-appropriate manner, concerning the juvenile's permanency plan.

Source: L. 99: Entire section added, p. 909, § 4, effective July 1. **L. 2001:** Entire section amended, p. 844, § 5, effective June 1. **L. 2006:** (1) and (3)(a) amended, p. 508, § 3, effective April 18. **L. 2007:** (1.5) and (3)(d) added, p. 1016, §§ 3, 2, effective May 22.

Cross references: For the legislative declaration contained in the 1999 act enacting this section, see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2001.

19-2-907. Sentencing schedule - options. (1) Upon completion of the sentencing hearing, pursuant to section 19-2-906, the court shall enter a decree of sentence or commitment imposing any of the following sentences or combination of sentences, as appropriate:

(a) Commitment to the department of human services, as provided in section 19-2-909;

(b) Confinement in the county jail or in community corrections, as provided in section 19-2-910;

(c) Detention, as provided in section 19-2-911;

(d) Placement of legal custody of the juvenile with a relative or other suitable person, as provided in section 19-2-912;

(e) Probation, as provided in section 19-2-913;

(f) Commitment to the community accountability program, as provided in section 19-2-914;

(g) Placement of legal custody of the juvenile in the county department of social services or a child placement agency, as provided in section 19-2-915;

(h) Placement of the juvenile in a hospital or other suitable facility for receipt of special care, as provided in section 19-2-916;

(i) Imposition of a fine, as provided in section 19-2-917;

(j) Ordering the juvenile to pay restitution, as provided in section 19-2-918;

(k) Ordering the juvenile to complete an anger management treatment program or any other appropriate treatment program, as provided in section 19-2-918.5;

(l) Participation in an evaluation to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's sentence; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a delinquent for unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., a crime in which the underlying factual basis involves domestic violence as defined in section 18-6-800.3 (1), C.R.S., stalking as defined in section 18-3-602, C.R.S., or violation of a protection order as defined in section 18-6-803.5, C.R.S. If the court orders participation in restorative justice practices, the facilitator shall provide these services for a fee of no more than one hundred twenty-five dollars based on a sliding scale; however, the fee may be waived by the court. Nothing in this paragraph (l) shall be construed to require a victim to participate in a restorative justice victim-offender conference.

(2) The judge shall sentence any juvenile adjudicated as a special offender as provided in section 19-2-908.

(3) Any sentence imposed on a juvenile pursuant to this section may include the juvenile's parent or guardian, as provided in section 19-2-919.

(4) If, as a condition of or in connection with any sentence imposed pursuant to this section, the court requires a juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of such requirement.

(5) (a) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, if the court finds that placement out of the home is necessary and is in the best interests of the juvenile and the community, the court shall place the juvenile, following the criteria established pursuant to section 19-2-212, in the facility or setting that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107 or the evaluation for placement required by section 19-1-115 (8) (e). Any placement recommendation in the evaluation prepared by the county department of social services shall be accorded great weight as the placement that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. Such recommendation prepared by the county department of social services shall set forth specific facts and reasons for the placement recommendation. If the evaluation for placement recommends placement in a facility located in Colorado that can provide appropriate treatment and that will accept the juvenile, then the court shall not place the juvenile in a facility outside this state. If the court places the juvenile in a facility located in Colorado other than one recommended by the evaluation for placement, in a facility located outside this state in accordance with the evaluation for placement, or in a facility in which the average monthly cost exceeds the amount established by the general assembly in the general appropriation bill, it shall make specific findings of fact, including the monthly cost of the facility in which such juvenile is placed, relating to its placement decision. A copy of such findings shall be sent to the chief justice of the supreme court, who shall report monthly to the joint budget committee and annually to the house and senate committees on health and human services, or any successor committees, on such placements. If the court commits the juvenile to the department of human services, it shall not make a specific placement, nor shall the provisions of this subsection (5) relating to specific findings of fact be applicable.

(b) If the court sentences a juvenile to an out-of-home placement funded by the department of human services or any county, or commits a juvenile to the department of human services, and the receiving agency determines that such placement or commitment does not follow the criteria established pursuant to section 19-2-212, including the placement recommended by the receiving agency, the receiving agency may, after assessing such juvenile's needs, file a petition with the court for reconsideration of the placement or commitment. Any such petition shall be filed not later than thirty days after the placement or commitment. The court shall hear such petition and enter an order thereon not later than thirty days after the filing of the petition, and after notice to all agencies or departments that might be affected by the resolution of the petition, and after all such agencies or departments have had an opportunity to participate in the hearing on the petition. Failure of any such agency or department to appear may be a basis for refusal to accept a subsequent petition by any such agency or department that had an opportunity to appear and be present at the original petition hearing. The notification to the parties required pursuant to this paragraph (b) shall be made by the petitioning party, and proof of such service shall be filed with the court. If the court sentences a juvenile to an out-of-home placement funded by the county department of social services, temporary legal custody of such juvenile shall be placed with the county department of social services, and the placement recommended by such county department shall be accorded great weight as the placement that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. Any deviation from such recommendation shall be supported by specific findings on the record of the case detailing the specific extraordinary circumstances that constitute the reasons for deviations from the placement recommendation of the county department of social services.

(6) On and after July 1, 2000, each juvenile who is adjudicated for commission of an offense that would constitute a sex offense if committed by an adult or who receives for such offense a deferred adjudication shall be required to pay a surcharge to the sex offender surcharge fund, as provided in section 18-21-103, C.R.S.; except that the judge may waive payment of all or any portion of such surcharge as provided in section 18-21-103 (4), C.R.S.

(7) The juvenile court in each judicial district may implement a mental illness screening program to screen juveniles sentenced pursuant to this part 9. If the juvenile court chooses to implement a mental illness screening program, the juvenile court shall use the standardized mental illness screening developed pursuant to section 16-11.9-102, C.R.S., and conduct the screening in accordance with procedures established pursuant to said section.

Source: L. 96: Entire article amended with relocations, p. 1659, § 1, effective January 1, 1997. **L. 97:** (1)(k) added, p. 1570, § 3, effective July 1. **L. 2000:** (6) added, p. 924, § 14, effective July 1. **L. 2001:** (1)(f) amended, p. 718, § 2, effective May 31. **L. 2002:** (7) added, p. 578, § 12, effective May 24. **L. 2007:** (5)(a) amended, p. 2029, § 38, effective June 1. **L. 2008:** (1)(l) added, p. 227, § 5, effective March 31; (5)(a) amended, p. 1893, § 64, effective August 5. **L. 2011:** (1)(l) amended, (HB 11-1032), ch. 296, p. 1406, § 15, effective August 10. **L. 2012:** (5)(a) amended, (HB 12-1310), ch. 268, p. 1399, § 19, effective June 7.

Editor's note: This section was formerly numbered as § 19-2-703 (2).

ANNOTATION

Law reviews. For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952). For article, "One Year Review of Domestic Relations", see 40 Den. L. Ctr. J. 115 (1963). For article, "Towards a More Practical Central Registry", see 51 Den. L.J. 509 (1974). For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Toward an Integrated Theory of Delinquency Responsibility", see 60 Den. L.J. 485 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

Incarceration, if any is to be decreed, is to be as provided in this section. Martinez v. People, 150 Colo. 374, 372 P.2d 947 (1962) (decided under former § 22-8-11, C.R.S. 1963).

Trial court cannot impose a more severe penalty upon a juvenile adjudicated a delinquent child than such child could have received as an adult for commission of the same offense. People in Interest of A.L., 713 P.2d 934 (Colo. App. 1985).

Acts not grounds for delinquency do not support commitment to institution for delinquents. It would be contrary to the obvious legislative intent to allow a child to be committed to an institution for juvenile delinquents where the only acts alleged, violation of child in need of supervision probation, were those which were not, in and of themselves, grounds for an adjudication of delinquency and for which the statute already provides a comprehensive and complete procedure for review and punishment. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Exclusive placement power in department. When the terms of this section are given their ordinary and generally accepted meaning, it appears that the general assembly has bestowed upon the department of institutions the exclusive power to place a delinquent in a particular facility once that child has been committed by the court to the department. Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975).

Trial court, once having committed an individual to the custody of the department of institutions pursuant to former § 19-2-703 (1)(a), may not limit the department's discretion regarding placement of that individual. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993).

Consecutive terms not authorized. In absence of express authorization in the Colorado Children's Code, court lacks authority to impose consecutive terms of commitment upon one adjudicated both a "repeat juvenile offender" and a "mandatory sentence offender". S.G.W. v. People, 752 P.2d 86 (Colo. 1988).

Child must first be adjudicated as delinquent before being placed on probation. People in Interest of F.D., 735 P.2d 496 (Colo. App. 1987).

Where a person is adjudicated a delinquent child at age 17 and is 18 at the time of the dispositional order, equal protection is not violated where the juvenile court retains jurisdiction and proceeds with disposition, even though similarly situated adults are subject to different sanctions contained in the Criminal Code. People in Interest of M.C., 774 P.2d 857 (Colo. 1989).

A court may place legal custody with the department of human services only if, concurrently, physical placement outside the

home is authorized. People in Interest of C.A.G., 903 P.2d 1229 (Colo. App. 1995).

Authority to commit to juvenile group care facilities or training schools. Juvenile courts have statutory authority to commit adjudicated delinquents to juvenile group care facilities or training schools under the supervision of the department of institutions. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

But not to impose limited confinement in county jail as probation condition. A juvenile court does not have the statutory authority to impose a limited or partial confinement in county jail as a condition of probation for a juvenile under 18 years of age. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

Implicit in the statutory grant of former subsection (1)(d) (now subsection (1)(b) and § 19-2-910) is the converse, that a juvenile court may not impose a jail sentence on those younger than 18 years of age. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

The custodial placement sentencing option of subsection (1)(d) is not available for violent juvenile offenders because the plain language of subsection (2) specifically states that the judge shall sentence any juvenile adjudicated as a special offender as provided in § 19-2-908. Thus, the availability of a custodial placement sentence for a violent juvenile offender depends entirely on whether such a sentence is authorized by § 19-2-908(1)(c)(I)(A). People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

Three overriding requirements must be met before a restitution order can be valid: The person who is required to pay restitution must receive adequate notice that the victim or the victim's family claims damages, there must be notice of the amount of restitution requested, and the person obligated to pay must be given the opportunity to controvert the victim's claimed monetary damages. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Restitution order was entered without adequate notice or an opportunity to be heard since the parent did not receive notice of her potential liability nor of her opportunity to challenge the validity of the amounts sought. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Under mandatory provisions of former § 19-2-703 (4) requiring the court to order restitution, the ability of juvenile to pay at the time restitution is ordered is irrelevant. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Restitution order is reasonable if it gives the juvenile sufficient latitude to comply at some time in the future. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Inability to pay bars enforcement of a restitution order only if it is the basis for revocation of probation. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Incarceration of juvenile not a bar to imposition of restitution order. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Court must make findings of the reasonableness of the restitution amount and the reasonableness of the repayment terms at the time restitution is ordered. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Court may consider family circumstances as well as the juvenile's potential ability to pay after release from incarceration in considering whether restitution would cause serious hardship or injustice to the juvenile. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Payment of restitution to victim's insurer. The broad statutory requirement that a delinquent child must pay "for any damage done to persons or property" fully authorizes a district court's order that the delinquent make restitution to the victim's insurer. People in Interest of P.J.N., 664 P.2d 245 (Colo. 1983).

Legislative intent underlying this section is that whenever possible, restitution should be required. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Restitution serves society's interest by encouraging juveniles to be responsible for the damage they cause. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Restitution decree within limits imposed by law and supported by evidence. People in Interest of M.H., 661 P.2d 1195 (Colo. App. 1983).

Restitution order upon juvenile who was adjudicated delinquent in proceeding arising from auto accident was proper even though he served a full sentence of incarceration and restitution was not part of conditional release. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Trial court cannot order juvenile who was adjudicated delinquent in proceeding arising from auto accident to pay restitution to the victim's automobile insurer because the insurer had no right to subrogation to sue the juvenile civilly under § 10-4-713, the no-fault insurance act. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Former § 19-2-703 (4) and § 13-21-107 (2) do not limit a parent's restitution obligation to $3,500 per delinquent act; rather, the "one delinquent act" limitation in that subsection, when read in conjunction with the "any person" language in § 13-21-107 provides that parental restitution payments cannot exceed $3,500 to each person entitled to restitution as a result of each delinquent act. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Applied in People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); Lovato v. Dist.

Court, 198 Colo. 419, 601 P.2d 1072 (1979); People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979); People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981); People v. M.A.W., 651 P.2d 433 (Colo. App. 1982); People in Interest of M.A.G., 732 P.2d 649 (Colo. App. 1986).

19-2-908. Sentencing - special offenders. (1) The court shall sentence a juvenile adjudicated as a special offender as follows:

(a) **Mandatory sentence offender.** The court shall place or commit any juvenile adjudicated as a mandatory sentence offender, as described in section 19-2-516 (1), out of the home for not less than one year, unless the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate; except that:

(I) If the person adjudicated as a mandatory sentence offender is eighteen years of age or older on the date of the sentencing hearing, the court may sentence that person to the county jail or to a community correctional facility or program for a period not to exceed two years, if such person has been adjudicated a mandatory sentence offender pursuant to this article for acts committed prior to such person's eighteenth birthday; or

(II) The juvenile or person may be released by the committing judge upon a showing of exemplary behavior.

(b) **Repeat juvenile offender.** The court shall sentence any juvenile adjudicated as a repeat juvenile offender, as described in section 19-2-516 (2), out of the home for not less than one year, unless the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate; except that:

(I) If the person adjudicated as a repeat juvenile offender is eighteen years of age or older on the date of the sentencing hearing, the court may sentence that person to the county jail or to a community correctional facility or program for a period not to exceed two years, if such person has been adjudicated a repeat juvenile offender pursuant to this article for acts committed prior to such person's eighteenth birthday; or

(II) The juvenile or person may be released by the committing judge upon a showing of exemplary behavior.

(c) **Violent juvenile offender.** (I) (A) Upon adjudication as a violent juvenile offender, as described in section 19-2-516 (3), the juvenile shall be placed or committed out of the home for not less than one year; except that this sub-subparagraph (A) shall not apply to a juvenile who is ten years of age or older, but less than twelve years of age, when the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate.

(B) Upon adjudication as a violent juvenile offender, if the person is eighteen years of age or older on the date of the sentencing hearing, the court may sentence such person to the county jail or to a community correctional facility or program for a period not to exceed two years, if such person has been adjudicated a violent juvenile offender pursuant to this article for acts committed prior to such person's eighteenth birthday.

(II) The court may commit a violent juvenile offender to the department of human services. The court may impose a minimum sentence during which the juvenile shall not be released from a residential program without prior written approval of the court that made the commitment.

(d) **Aggravated juvenile offender.** The court shall sentence an aggravated juvenile offender as provided in section 19-2-601.

Source: L. 96: Entire article amended with relocations, p. 1661, § 1, effective January 1, 1997. **L. 99:** (1)(b) amended, p. 1372, § 4, effective July 1.

Editor's note: This section was formerly numbered as 19-2-801 (2), 19-2-802 (2), and 19-2-803 (2) and (3). Prior to relocation in 1996, these sections were contained in a title that was repealed and reenacted in 1987. Provisions of these sections, as they existed in 1987, were contained in several sections in 1986, the year prior to the repeal and reenactment of this title. For a detailed comparison, see the "Children's Code (1987)" table located in the back of the index.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Toward an Integrated Theory of Delinquency Responsibility", see 60 Den. L.J. 485 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Statute meets equal protection and due process requirements. Statutory scheme under which juvenile may be classified as mandatory sentence offender either upon probation revocation or upon new adjudication of delinquency and under which prosecutor has discretion to seek revocation rather than new adjudication, thus avoiding necessity for preliminary hearing and jury trial, does not deny juveniles equal protection nor unconstitutionally delegate discretion to prosecutor. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Because former § 19-2-703 (4) provides for notice and a hearing when a juvenile has allegedly violated probation and because the prosecution must establish the alleged criminal offense beyond a reasonable doubt, the statutory scheme under which probation revocation triggers mandatory sentence offender status does not deny due process. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

The violent juvenile offender statute does not create a separate and distinct offense; rather, it is a dispositional statute associated with the underlying delinquent act and thus does not violate this constitutional guarantee of equal protection. People in Interest of D.G., 725 P.2d 1166 (Colo. App. 1986).

Section requires court to impose specific disposition. The mandatory sentence provisions do not enhance the disposition but merely require the court to impose a specific disposition on the offender, namely, that the court shall place or commit the offender out of the home for not less than one year. People in Interest of C.R.B., 662 P.2d 198 (Colo. App. 1983).

Mandatory placement or commitment for not less than one year pursuant to the introductory portion of former subsection (2)(b) (new subsection (1)(a)) does not extend to jail sentences imposed pursuant to former subsection (2)(b)(I) (new subsection (1)(a)(I)). People v. T.O., 696 P.2d 811 (Colo. 1985).

Release upon a showing of exemplary behavior. Former subsection (2)(b)(II) (now subsection (1)(a)(II)) does not apply to persons sentenced to jail and provisions relating to good time must be applied. People v. T.O., 696 P.2d 811 (Colo. 1985).

Juvenile's right to equal protection was not violated by trial court's refusal to grant juvenile, who was charged as being a violent juvenile offender, five rather than four peremptory challenges where juvenile failed to show that there was unequal treatment within the class of violent juvenile offenders. Although an aggravated juvenile offender is entitled to five peremptory challenges under former § 19-2-804 (4)(b)(I) (now § 19-2-601 (3)(b)(I)), the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Trial court correctly sentenced juvenile to one-year commitment out of the home where former subsection (2) (now subsection (1)(c)(I)) required that adjudicated violent juvenile offenders "shall" be so committed, where juvenile failed to argue that he fell within one of the statutory exceptions, and where he was not placed on probation so as to qualify for Juvenile Intensive Supervision Program, former § 19-2-1501, et seq. (now §§ 19-2-306 and 19-2-307). People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Subsection (1)(c)(I)(A) does not allow a violent juvenile offender to be placed in a custodial placement as an initial sentencing option. The trial court did not err in interpreting the phrase "placed or committed out of the home" as requiring the court to place a juvenile offender in a facility or center operated or licensed by the department of human services. People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

Enactment of juvenile intensive supervision program, former § 19-2-1501 et seq. (now §§ 19-2-306 and 19-2-307), does not change requirements of former subsection (2)(a) (now subsection (1)(c)(I)), as such program applies to any juvenile who has been placed on probation and who presents a high risk of future placement within juvenile correctional facilities. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Consecutive terms not authorized. In absence of express authorization in the Colorado Children's Code, court lacks authority to impose consecutive terms of commitment upon one adjudicated both a "repeat juvenile offender" and a "mandatory sentence offender". S.G.W. v. People, 752 P.2d 86 (Colo. 1988).

Applied in People in Interest of C.B., 196 Colo. 362, 585 P.2d 281 (1978).

19-2-909. Sentencing - commitment to the department of human services. (1) (a) Except as otherwise provided in sections 19-2-601 and 19-2-921 for an aggravated juvenile offender, the court may commit a juvenile to the department of human services for

a determinate period of up to two years if the juvenile is adjudicated for an offense that would constitute a felony or a misdemeanor if committed by an adult; except that, if the juvenile is younger than twelve years of age and is not adjudicated an aggravated juvenile offender, the court may commit the juvenile to the department of human services only if the juvenile is adjudicated for an offense that would constitute a class 1, class 2, or class 3 felony if committed by an adult.

(b) Any commitment to the department of human services pursuant to section 19-2-601 or paragraph (a) of this subsection (1) shall be followed by a mandatory period of parole of six months, unless the period of parole is extended by the juvenile parole board pursuant to section 19-2-1002 (5).

(c) For purposes of this section:

(I) "Determinate period" is defined in section 19-1-103 (40.5).

(II) "Period of parole" means the period between the parole period start date and the parole period end date as determined by the juvenile parole board. The period of parole applies to both mandatory six-month parole and extended parole pursuant to section 19-2-1002 (5). The period of parole continues unless the juvenile is deemed to be on escape status, parole has been suspended pursuant to section 19-2-1002, or the juvenile returns to commitment status pursuant to section 19-2-1004. In such circumstances, the period of parole stops until the juvenile has returned to parole status.

(2) Any juvenile committed to the department of human services may be placed in the Lookout Mountain school, the Mount View school, or any other training school or facility, or any other disposition may be made that the department may determine as provided by law.

(3) (Deleted by amendment, L. 2008, p. 1106, § 12, effective July 1, 2008.)

Source: L. 96: Entire article amended with relocations, p. 1662, § 1, effective January 1, 1997. **L. 97:** (1)(a) amended, p. 998, § 1, effective May 27. **L. 2001:** (1)(b) amended and (3) added, p. 583, § 1, effective July 1. **L. 2003:** IP(1)(b) amended, p. 1518, § 1, effective May 1. **L. 2008:** (1)(b), (1)(c), and (3) amended, p. 1106, § 12, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Acts not grounds for delinquency do not support commitment to institution for delinquents. It would be contrary to the obvious legislative intent to allow a child to be committed to an institution for juvenile delinquents where the only acts alleged, violation of child in need of supervision probation, were those which were not, in and of themselves, grounds for an adjudication of delinquency and for which the statute already provides a comprehensive and complete procedure for review and punishment. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Exclusive placement power in department. When the terms of this section are given their ordinary and generally accepted meaning, it appears that the general assembly has bestowed upon the department of institutions the exclusive power to place a delinquent in a particular facility once that child has been committed by the court to the department. Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975).

Juvenile court correctly noted that the maximum sentence the juvenile court can impose under the Colorado Children's Code in the first instance is two years. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

19-2-910. Sentencing - persons eighteen years of age or older - county jail - community corrections. (1) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, the court may commit a person eighteen years of age or older but less than twenty-one years of age to the department of human services if he or she is adjudicated a juvenile delinquent for an act committed prior to his or her eighteenth birthday or upon revocation of probation.

(2) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, the court may sentence a person who is eighteen years of age or older on the date of a sentencing hearing to the county jail for a period not to exceed six months or to a

community correctional facility or program for a period not to exceed one year, which may be served consecutively or in intervals, if he or she is adjudicated a juvenile delinquent for an act committed prior to his or her eighteenth birthday.

Source: L. 96: Entire article amended with relocations, p. 1663, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-703 (1)(b) and (1)(c). Prior to relocation in 1996, the said 19-2-703 (1)(b) and (1)(c) were contained in a title that was repealed and reenacted in 1987. Provisions of those sections, as they existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Trial court cannot impose a more severe penalty upon a juvenile adjudicated a delinquent child than such child could have received as an adult for commission of the same offense. People in Interest of A.L., 713 P.2d 934 (Colo. App. 1985).

Trial court, once having committed an individual to the custody of the department of institutions pursuant to former § 19-2-703 (1)(a), may not limit the department's discretion regarding placement of that individual. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993).

Where a person is adjudicated a delinquent child at age 17 and is 18 at the time of the dispositional order, equal protection is not violated where the juvenile court retains jurisdiction and proceeds with disposition, even though similarly situated adults are subject to different sanctions contained in the Colorado Criminal Code. People in Interest of M.C., 774 P.2d 857 (Colo. 1989).

A court may place legal custody with the department of human services only if, concurrently, physical placement outside the home is authorized. People in Interest of C.A.G., 903 P.2d 1229 (Colo. App. 1995).

19-2-911. Sentencing - alternative services - detention. (1) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender and except as provided in subsection (2) of this section, the court may sentence the juvenile to alternative services funded through section 19-2-212 or other alternative services programs. If a juvenile who is twelve years of age or older fails to make satisfactory progress in the alternative services to which he or she is sentenced or if the court finds that a sentence to alternative services would be contrary to the community interest, the court may sentence any juvenile adjudicated for an offense that would constitute a class 3, class 4, class 5, or class 6 felony or a misdemeanor if committed by an adult to detention for a period not to exceed forty-five days. Release for purposes of work, therapy, education, or other good cause may be granted by the court. The court may not sentence to detention any juvenile adjudicated for an offense that would constitute a class 1 or class 2 felony if committed by an adult.

(2) In the case of a juvenile who has been adjudicated a juvenile delinquent for the commission of one of the offenses described in section 19-2-508 (3) (a) (III), the court shall sentence the juvenile to a minimum mandatory period of detention of not fewer than five days.

Source: L. 96: Entire article amended with relocations, p. 1663, § 1, effective January 1, 1997. **L. 2001:** (2) amended, p. 137, § 1, effective July 1.

Editor's note: This section was formerly numbered as 19-2-703 (1)(e)(I) and (1)(h)(I). Prior to relocation in 1996, the said 19-2-703(1)(e)(I) and (1)(h)(I) were contained in a title that was repealed and reenacted in 1987. Provisions of those sections, as they existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-912. Sentencing - placement with relative. Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, the court may place the juvenile in the

legal custody of a relative or other suitable person under such conditions as the court may impose, which may include placing the juvenile on probation, as provided in section 19-2-913, or under protective supervision.

Source: L. 96: Entire article amended with relocations, p. 1664, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-703 (1)(g). Prior to relocation in 1996, the said 19-2-703 (1)(g) was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-913. Sentencing - probation - supervised work program. (1) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender:

(a) The court may place the juvenile on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the court may impose;

(b) The court may place the juvenile on probation and place the juvenile in the juvenile intensive supervision program created pursuant to section 19-2-306;

(c) The court may require as a condition of probation that the juvenile report for assignment to a supervised work program, place such juvenile in a child care facility that shall provide a supervised work program, or require that the custodial parent or guardian of the juvenile assist the juvenile in participating in a supervised work program, if:

(I) The juvenile is not deprived of the schooling that is appropriate to his or her age, needs, and specific rehabilitative goals;

(II) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the juvenile, and is combined with counseling from a juvenile probation officer or other guidance personnel;

(III) The supervised work program assignment is made for a period of time consistent with the juvenile's best interest, but not exceeding one hundred eighty days.

Source: L. 96: Entire article amended with relocations, p. 1664, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-703 (1)(f), (1)(f.5), and (1)(i). Prior to relocation in 1996, the said 19-2-703 (1)(f), (1)(f.5), and (1)(i) were contained in a title that was repealed and reenacted in 1987. Provisions of those sections, as they existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Child must first be adjudicated as delinquent before being placed on probation. People in Interest of F.D., 735 P.2d 496 (Colo. App. 1987).

19-2-914. Sentencing - community accountability program. Except as otherwise provided in section 19-2-601, the court may sentence the juvenile to participate in the community accountability program as set forth in section 19-2-309.5. Such a sentence shall be a condition of probation and shall be for higher risk juveniles who would have otherwise been sentenced to detention or out-of-home placement or committed to the department of human services. A sentence pursuant to this section shall be conditioned on the availability of space in the community accountability program and on a determination by the division of youth corrections that the juvenile's participation in the program is appropriate. In the event that the division of youth corrections determines the program is at maximum capacity

or that a juvenile's participation is not appropriate, the juvenile shall be ordered to return to the sentencing court for another sentencing hearing.

Source: L. 96: Entire article amended with relocations, p. 1664, § 1, effective January 1, 1997. **L. 2001:** Entire section R&RE, p. 718, § 3, effective May 31.

Editor's note: This section was formerly numbered as 19-2-703 (1)(e)(II). Prior to relocation in 1996, the said 19-2-703 (1)(e)(II) was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 48 of chapter 283, Session Laws of Colorado 1996.

19-2-915. Sentencing - legal custody - social services. Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, the court, following the criteria for out-of-home placement established pursuant to section 19-2-212, may place legal custody of the juvenile in the county department of social services.

Source: L. 96: Entire article amended with relocations, p. 1665, § 1, effective January 1, 1997. **L. 2001:** Entire section amended, p. 845, § 6, effective June 1.

Editor's note: This section was formerly numbered as 19-2-703 (1)(j). Prior to relocation in 1996, the said 19-2-703 (1)(j) was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2001.

19-2-916. Sentencing - placement based on special needs of the juvenile. (1) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, the court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he or she receive other special care and may place the juvenile in a hospital or other suitable facility for such purposes; except that no juvenile may be placed in a mental health facility operated by the department of human services until the juvenile has received a mental health hospital placement prescreening resulting in a recommendation that the juvenile be placed in a facility for an evaluation pursuant to section 27-65-105 or 27-65-106, C.R.S., or a hearing has been held by the court after notice to all parties, including the department of human services. No order for a seventy-two-hour treatment and evaluation shall be entered unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented by a mental health professional that indicates that mental illness is present in the juvenile. The court shall make, prior to the hearing, such orders regarding temporary custody of the juvenile as are deemed appropriate.

(2) Placement in any mental health facility operated by the department of human services shall continue for such time as ordered by the court or until the professional person in charge of the juvenile's treatment concludes that the treatment or placement is no longer appropriate. If placement or treatment is no longer deemed appropriate, the court shall be notified and a hearing held for further disposition of the juvenile within five days excluding Saturdays, Sundays, and legal holidays. The court shall make, prior to the hearing, such orders regarding temporary custody of the juvenile as are deemed appropriate.

Source: L. 96: Entire article amended with relocations, p. 1665, § 1, effective January 1, 1997. **L. 2002:** (1) amended, p. 579, § 13, effective May 24. **L. 2010:** (1) amended, (SB 10-175), ch. 188, p. 789, § 39, effective April 29.

Editor's note: This section was formerly numbered as 19-2-703 (1)(k). Prior to relocation in 1996, the said 19-2-703 (1)(k) was contained in a title that was repealed and reenacted in 1987.

Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-917. Sentencing - fines. Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, the court may, as the sole punishment or in addition to any other sentence or commitment specified in section 19-2-907, impose on the juvenile a fine of not more than three hundred dollars.

Source: L. 96: Entire article amended with relocations, p. 1665, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-703 (1)(d). Prior to relocation in 1996, the said 19-2-703 (1)(d) was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-918. Sentencing - restitution by juvenile. (1) If the court finds that a juvenile who receives a deferral of adjudication or who is adjudicated a juvenile delinquent has damaged the personal or real property of a victim, that the victim's personal property has been lost, or that personal injury has been caused to a victim as a result of the juvenile's delinquent act, the court, in addition to any other sentence or commitment that it may impose on the juvenile pursuant to section 19-2-907, shall enter a sentencing order requiring the juvenile to make restitution as required by article 18.5 of title 16 and part 6 of article 1.3 of title 18, C.R.S.

(2) Restitution shall be ordered to be paid in a reasonable manner, as determined by the court and in accordance with article 18.5 of title 16 and part 6 of article 1.3 of title 18, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1666, § 1, effective January 1, 1997; entire section amended, p. 1782, § 10, effective January 1, 1997. **L. 2000:** Entire section amended, p. 1041, § 2, effective September 1. **L. 2006:** Entire section amended, p. 1493, § 23, effective June 1.

Editor's note: This section was formerly numbered as 19-2-703 (4)(a) and (4)(b). Prior to relocation in 1996, the said 19-2-703 (4)(a) and (4)(b) were contained in a title that was repealed and reenacted in 1987. Provisions of those sections, as they existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Three overriding requirements must be met before a restitution order can be valid: The person who is required to pay restitution must receive adequate notice that the victim or the victim's family claims damages, there must be notice of the amount of restitution requested, and the person obligated to pay must be given the opportunity to controvert the victim's claimed monetary damages. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Under mandatory provisions of former § 19-2-703 (4) requiring the court to order restitution, the ability of juvenile to pay at the time restitution is ordered is irrelevant. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Restitution order is reasonable if it gives the juvenile sufficient latitude to comply at some time in the future. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Inability to pay bars enforcement of a restitution order only if it is the basis for revocation of probation. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Incarceration of juvenile not a bar to imposition of restitution order. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Court must make findings of the reasonableness of the restitution amount and the reasonableness of the repayment terms at the time restitution is ordered. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Court may consider family circumstances as well as the juvenile's potential ability to pay

after release from incarceration in considering whether restitution would cause serious hardship or injustice to the juvenile. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Legislative intent underlying this section is that whenever possible, restitution should be required. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Restitution serves society's interest by encouraging juveniles to be responsible for the damage they cause. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Payment of restitution to victim's insurer. The broad statutory requirement that a delinquent child must pay "for any damage done to persons or property" fully authorizes a district court's order that the delinquent make restitution to the victim's insurer. People in Interest of P.J.N., 664 P.2d 245 (Colo. 1983).

Restitution order upon juvenile who was adjudicated delinquent in proceeding arising from auto accident was proper even though he served a full sentence of incarceration and restitution was not part of conditional release. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Trial court cannot order juvenile who was adjudicated delinquent in proceeding arising from auto accident to pay restitution to the victim's automobile insurer because the insurer had no right to subrogation to sue the juvenile civilly under § 10-4-713, the no-fault insurance act. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Adjudication of juvenile delinquency is not conviction of a crime within the language of the federal Bankruptcy Code; therefore, a restitution debt is dischargeable under the code. In re Sweeney, 341 B.R. 35 (Bankr. D. Colo. 2006), aff'd, 492 F.3d 1189 (10th Cir. 2007).

Juvenile court lacked authority to transfer defendant's restitution obligation from an unrelated juvenile case to defendant's adult case, and district court had no authority to include the juvenile court's restitution order in its community corrections or department of corrections sentence in an unrelated case. People v. Brooks, 250 P.3d 771 (Colo. App. 2010).

19-2-918.5. Sentencing - animal cruelty - anger management treatment. (1) In addition to any sentence imposed pursuant to this section, any juvenile who has been adjudicated a juvenile delinquent for the commission of cruelty to animals, as described in section 18-9-202 (1) (a), C.R.S., in which the underlining factual basis of which has been found by the court to include the knowing or intentional torture or torment of an animal which needlessly injures, mutilates, or kills an animal, may be ordered to complete an anger management treatment program or any other treatment program deemed appropriate by the court.

(2) The court may order an evaluation to be conducted prior to disposition if an evaluation would assist the court in determining an appropriate disposition. The parents or legal guardian of the juvenile ordered to undergo an evaluation shall be required to pay the cost of the evaluation. If the evaluation results in a recommendation of treatment and if the court so finds, the juvenile shall be ordered to complete an anger management treatment program or any other treatment program deemed appropriate by the court.

(3) The disposition for any juvenile who has been adjudicated a juvenile delinquent a second or subsequent time, the underlying factual basis of which has been found by the court to include an act of cruelty to animals, as described in section 18-9-202 (1) (a), C.R.S., shall include the completion of an anger management treatment program or any other treatment program deemed appropriate by the court.

(4) Nothing in this section shall preclude the court from ordering treatment in any appropriate case.

(5) This section does not apply to the treatment of pack or draft animals by negligently overdriving, overloading, or overworking them, or the treatment of livestock and other animals used in the farm or ranch production of food, fiber, or other agricultural products when such treatment is in accordance with accepted animal husbandry practices, the treatment of animals involved in activities regulated pursuant to article 60 of title 12, C.R.S., the treatment of animals involved in research if such research facility is operating under rules and regulations set forth by the state or federal government, the treatment of animals involved in rodeos, the treatment of dogs used for legal hunting activities, or to statutes regulating activities concerning wildlife and predator control in the state, including trapping.

Source: L. 97: Entire section added, p. 1570, § 4, effective July 1.

19-2-919. Sentencing - requirements imposed on parents. (1) In addition to any of the provisions specified in sections 19-2-907 to 19-2-918, any sentence imposed pursuant to section 19-2-907 may require:

(a) The juvenile or both the juvenile and his or her parent or guardian to perform volunteer service in the community designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile;

(b) The parent or guardian of a juvenile or both the parent or guardian and the juvenile to attend the parental responsibility training program described in section 19-2-304. The court may make reasonable orders requiring proof of completion of such training course within a certain time period and may provide that any violation of such orders shall subject the parent or guardian to the contempt sanctions of the court.

(c) The juvenile or both the juvenile and his or her custodial parent or parent with parental responsibilities or guardian to perform services for the victim, as provided in section 19-2-308, designed to contribute to the rehabilitation of the juvenile, if the victim consents in writing to such services. However, the value of the services required to be rendered by the parent, guardian, legal custodian of, or parent with parental responsibilities with respect to the juvenile under this paragraph (c) shall not exceed twenty-five thousand dollars for any one delinquent act.

(2) In addition to any sentence imposed pursuant to section 19-2-907 or subsection (1) of this section and regardless of whether the court orders the juvenile to pay restitution pursuant to section 19-2-918, the court may order:

(a) The guardian or legal custodian of the juvenile or the parent allocated parental responsibilities with respect to the juvenile to make restitution to one or more victims pursuant to the terms and conditions set forth in this subsection (2); except that the liability of the guardian or legal custodian of the juvenile or parent allocated parental responsibilities with respect to the juvenile under this subsection (2) shall not exceed twenty-five thousand dollars for any one delinquent act. If the court finds, after a hearing, that the guardian or legal custodian of the juvenile or the parent allocated parental responsibilities with respect to the juvenile has made diligent, good faith efforts to prevent or discourage the juvenile from engaging in delinquent activity, the court shall absolve the guardian or legal custodian or parent allocated parental responsibilities with respect to the juvenile of liability for restitution under this subsection (2).

(b) The juvenile's parent, so long as the parent is a party to the delinquency proceedings, to make restitution to one or more victims pursuant to the terms and conditions set forth in this paragraph (b); except that the liability of the juvenile's parent under this paragraph (b) shall not exceed the amount of twenty-five thousand dollars for any one delinquent act. Notwithstanding the provisions of this subsection (2), the court may not enter an order of restitution against a juvenile's parent unless the court, prior to entering the order of restitution, holds a restitution hearing at which the juvenile's parent is present. If the court finds, after the hearing, that the juvenile's parent has made diligent, good faith efforts to prevent or discourage the juvenile from engaging in delinquent activity, the court shall absolve the parent of liability for restitution under this paragraph (b). For purposes of this paragraph (b), "parent" is defined in section 19-1-103 (82) (a).

(3) Any order of restitution entered pursuant to this section may be collected pursuant to the provisions of article 18.5 of title 16, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1666, § 1, effective January 1, 1997; (2) amended, p. 1782, § 11, effective January 1, 1997. **L. 98:** (1)(c) and (2)(a) amended, p. 1408, § 69, effective February 1, 1999. **L. 2000:** (1)(c) and (2) amended and (3) added, p. 1042, § 3, effective September 1.

Editor's note: This section was formerly numbered as 19-2-703 (1)(l) and (4)(c). Prior to relocation in 1996, the said 19-2-703 (1)(l) and (4)(c) were contained in a title that was repealed and reenacted in 1987. Provisions of those sections, as they existed in 1987, are similar to those contained in 19-3-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Parental Financial Liability for Juvenile Delinquents", see 37 Colo. Law. 49 (November 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Three overriding requirements must be met before a restitution order can be valid: The person who is required to pay restitution must receive adequate notice that the victim or the victim's family claims damages, there must be notice of the amount of restitution requested, and the person obligated to pay must be given the opportunity to controvert the victim's claimed monetary damages. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Restitution order was entered without adequate notice or an opportunity to be heard since the parent did not receive notice of her potential liability nor of her opportunity to challenge the validity of the amounts sought. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Legislative intent underlying this section is that whenever possible, restitution should be required. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Former subsection (4) (now subsection (2)) and § 13-21-107 (2) do not limit a parent's restitution obligation to $3,500 per delinquent act; rather, the "one delinquent act" limitation in that subsection, when read in conjunction with the "any person" language in § 13-21-107 provides that parental restitution payments cannot exceed $3,500 to each person entitled to restitution as a result of each delinquent act. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Court not authorized to order a jail sentence against a parent pursuant to this section. People v. J.M., 22 P.3d 545 (Colo. App. 2000).

19-2-920. Out-of-home placement - runaways - duty to notify. When a juvenile who is sentenced to detention, committed to the department of human services, or otherwise sentenced or placed in out-of-home placement pursuant to section 19-2-907 runs away from the facility or home in which the juvenile is placed, the person in charge of the facility or the foster parent shall notify the court and the local law enforcement agency as soon as possible after discovering that the juvenile has run away from the facility or home.

Source: L. 96: Entire article amended with relocations, p. 1667, § 1, effective January 1, 1997.

19-2-921. Commitment to department of human services. (1) (a) When a juvenile is committed to the department of human services, the court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the juvenile.

(b) The department of human services shall provide the court with any information concerning a juvenile committed to its care that the court at any time may require.

(1.5) (a) When a court commits a juvenile to the state department of human services pursuant to the provisions of this article, the court shall make the following specific determinations:

(I) Whether placement of the juvenile outside the home would be in the juvenile's and community's best interest; and

(II) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home; whether it is reasonable that such efforts are not made because an emergency situation exists that requires the immediate removal of the juvenile from the home; or whether such efforts are not required because of circumstances described in section 19-1-115 (7).

(b) If a juvenile is making a transition from the legal custody of a county department of social services to commitment with the state department of human services, the court shall conduct a permanency hearing in combination with the sentencing hearing. The court shall consider multidisciplinary recommendations for sentencing and permanency planning. In conducting such a permanency hearing, the court shall make determinations pursuant to section 19-2-906.5 (3) (a).

(2) (a) The department of human services shall designate receiving centers for juvenile delinquents committed to the department.

(b) If a change is made in the designation of a receiving center by the department, it shall so notify the juvenile courts at least thirty days prior to the date that the change takes effect.

(3) (a) As provided in section 19-2-907, commitment of a juvenile to the department of human services shall be for a determinate period.

(b) (I) The juvenile court may commit any juvenile adjudicated as an aggravated juvenile offender for an offense other than an offense that would constitute a class 1 or class 2 felony if committed by an adult to the department of human services for a determinate period of up to five years.

(II) The juvenile court shall commit any juvenile adjudicated as an aggravated juvenile offender for an offense that would constitute a class 2 felony if committed by an adult to the department of human services for a determinate period of at least three but not more than five years.

(III) The juvenile court shall commit any juvenile adjudicated as an aggravated juvenile offender for an offense that would constitute a class 1 felony if committed by an adult to the department of human services for a determinate period of at least three but not more than seven years.

(c) The juvenile court may commit any juvenile who is not adjudicated an aggravated juvenile offender but is adjudicated for an offense that would constitute a felony or a misdemeanor to the department of human services, and the determinate period of commitment shall not exceed two years; except that, if the juvenile is ten or eleven years of age and is not adjudicated an aggravated juvenile offender, the juvenile may be committed to the department of human services only if the juvenile is adjudicated for an offense that would constitute a class 1, class 2, or class 3 felony if committed by an adult.

(3.5) For all hearings and reviews concerning a juvenile who is committed to the department of human services, the entity conducting the hearing or review shall ensure that notice is provided to the juvenile and to the following persons with whom the juvenile is placed:

(a) Foster parents;

(b) Pre-adoptive parents; or

(c) Relatives.

(4) The department of human services may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the juvenile or the public to extend the commitment. Upon filing the petition, the court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

(5) (a) When a juvenile is placed in a community placement by the department of human services following commitment pursuant to section 19-2-601 or 19-2-907, an administrative review shall be conducted every six months after said placement for as long as the juvenile remains in a community placement under the department of human services.

(b) When a juvenile is placed in a community placement for a period of twelve months or longer, a court of competent jurisdiction or an administrative body appointed or approved by the court that is not under the supervision of the department shall conduct a permanency hearing pursuant to the federal "Social Security Act", 42 U.S.C. sec. 675 (5) (C) no later than the twelfth month of the community placement and at least every twelve months thereafter while the juvenile remains in a community placement. At the permanency hearing, the entity conducting the hearing shall make the following determinations:

(I) Whether continued community placement is in the best interests of the juvenile and the community;

(II) Whether the juvenile's safety is protected in the community placement;

(III) Whether reasonable efforts have been made to finalize the juvenile's permanency plan that is in effect at that time;

(IV) Whether continued community placement is necessary and appropriate;

(V) Whether there has been compliance with the juvenile's case plan;

(VI) Whether progress has been made toward alleviating or mitigating the causes that necessitated the community placement;

(VII) Whether there is a date projected by which the juvenile will be returned and safely maintained in his or her home, placed for legal guardianship, or placed in a planned and permanent living arrangement; and

(VIII) Whether procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's community placement, or any determination affecting parental visitation.

(c) The entity conducting the permanency hearing shall consult with the juvenile, in an age-appropriate manner, concerning the juvenile's permanency plan.

(6) Parole supervision of juveniles committed to the department of human services under section 19-2-601 or 19-2-907, as determined by the juvenile parole board, shall not exceed six months, except as otherwise provided by statute.

(7) When a juvenile is released or released to parole supervision by the department of human services or escapes from said department, the department shall notify the committing court, the district attorney, the Colorado bureau of investigation, and the initiating law enforcement agency. If the juvenile is on parole status, the division of youth corrections shall notify the juvenile parole board, pursuant to section 19-2-1002 (7) (b) (II), of any discharge as a matter of law, any placement change that may impact public safety or victim safety as determined by the division of youth corrections, and any escape and recapture that occurs during the period of parole.

(7.5) If the terms and conditions of a juvenile's parole include the condition that the juvenile attend school, the department of human services shall notify the school district in which the juvenile will be enrolled of this condition.

(8) When a juvenile is released by the department of human services to parole supervision, the payment of any remaining restitution shall be a condition of parole.

(9) At least ninety days prior to expiration of commitment to the department of human services, notification shall be given to the responsible person who had custody of the juvenile immediately prior to the commitment. Reasonable efforts shall be made to return custody of the juvenile to the family or responsible person who had custody of the juvenile immediately prior to the commitment, unless a court of competent jurisdiction orders that custody of the juvenile shall be with a different person.

(10) When custody of a juvenile who will be under the age of eighteen years at the time of expiration of commitment cannot be determined or none of the resources described in subsection (9) of this section exist, the division of youth corrections shall make a referral to the last-known county of residence of the responsible person having custody of the juvenile immediately prior to the commitment. The referral to the county shall be made by the division of youth corrections at least ninety days prior to the expiration of the juvenile's commitment. The county department of human services or county department of social services shall conduct an assessment of the child protection needs of the juvenile and, pursuant to rules adopted by the state board, provide services in the best interest of the juvenile. The division of youth corrections shall work in collaboration with the county department conducting the assessment and shall provide parole supervision services as described in section 19-2-1003.

(11) If a juvenile who is committed to the department of human services escapes from a facility operated by the department or a facility with which the department contracts, the department shall not count the time the juvenile is on escape status toward completion of the juvenile's commitment.

Source: L. 96: Entire article amended with relocations, p. 1667, § 1, effective January 1, 1997. **L. 97:** (3)(c) amended, p. 998, § 2, effective May 27; (3)(b) amended, p. 1031, § 68, effective August 6. **L. 99:** (3)(b) amended, p. 34, § 2, effective July 1. **L. 2001:** (6) amended, p. 584, § 2, effective July 1. **L. 2003:** (6) amended, p. 1518, § 2, effective May 1. **L. 2006:** (1.5) added and (5) amended, p. 509, § 4, effective April 18. **L. 2007:** (3.5) and (5)(c) added, p. 1017, §§ 5, 4, effective May 22. **L. 2008:** (7) and (9) amended and (7.5) and (10) added, p. 1107, § 13, effective July 1. **L. 2010:** (11) added, (HB 10-1065), ch. 27, p. 102, § 1, effective March 18.

Editor's note: This section was formerly numbered as 19-2-704. Prior to relocation in 1996, the said section 19-2-704 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Construction of consecutive sentence provisions. Statute requiring the mandatory imposition of consecutive sentences for attempted escape, statute applying the statute on attempted escapes to juvenile offenders, and general children's code statute on commitment of persons to the department of institutions were construed to be in accord with each other, and the imposition of consecutive sentences was held to be an exception to the general children's code section limiting commitments of persons 18 years of age or older to a total of two years. People in Interest of E.Z.L., 815 P.2d 987 (Colo. App. 1991).

There is nothing unfair or shocking to the conscience either in the trial court's imposition of a two-year commitment for juvenile as provided by former § 19-2-704 (3) or in its refusal to grant credit for pre-dispositional detention. People v. T.S.R., 843 P.2d 105 (Colo. App. 1992).

Juvenile court correctly noted that the maximum sentence the juvenile court can impose under the Colorado Children's Code in the first instance is two years. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Applied in J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982); Rocha v. People, 713 P.2d 350 (Colo. 1986).

19-2-922. Juveniles committed to department of human services - evaluation and placement. (1) (a) Each juvenile committed to the custody of the department of human services shall be examined and evaluated by the department prior to institutional placement or other disposition.

(b) Such evaluation and examination shall be conducted at a detention facility and shall be completed within thirty days. The department of human services may, by rule, determine the extent and scope of the evaluation and examination. To the extent possible and relevant, the evidence, reports, examination, studies, and other materials utilized in a sentencing hearing conducted under section 19-2-906 shall also be utilized in evaluation and examination conducted under this section. The provisions of this paragraph (b) shall not apply to examination and evaluation conducted pursuant to section 19-2-923 (1).

(c) The examination and evaluation shall include the use of an objective risk assessment that is based upon researched factors that correlate to a risk to the community. The results of the objective risk assessment shall be used to help identify treatment services for the juvenile during his or her commitment and the period of parole supervision.

(2) Each juvenile shall then be placed by the department in the appropriate state institution or facility or placed as provided in section 19-2-409 or 19-2-410, as indicated by the examination and evaluation.

(3) (a) When the department of human services determines that a juvenile requires placement in a state facility for children with developmental disabilities, as defined in article 10.5 of title 27, C.R.S., it shall initiate proceedings under article 10.5 of title 27, C.R.S., and notify the court thereof.

(b) (I) When the department of human services determines that a juvenile may require treatment for mental illness, it shall conduct or have a mental health professional conduct a mental health hospital placement prescreening on the juvenile.

(II) If the mental health hospital placement prescreening report recommends that the juvenile be evaluated, the juvenile may be transferred to a mental health facility operated by the department of human services for such evaluation.

(III) If the evaluation report states that the juvenile has a mental illness, as provided in sections 27-65-105 and 27-65-106, C.R.S., the department of human services shall initiate proceedings under article 65 of title 27, C.R.S., and notify the court thereof.

Source: L. 96: Entire article amended with relocations, p. 1669, § 1, effective January 1, 1997. **L. 2002:** (3)(b)(I) and (3)(b)(II) amended, p. 579, § 14, effective May 24.

L. 2006: (3)(b)(III) amended, p. 1401, § 55, effective August 7. **L. 2008:** (1)(c) added, p. 1098, § 2, effective July 1. **L. 2009:** (1)(b) amended, (SB 09-044), ch. 57, p. 210, § 18, effective March 25. **L. 2010:** (3)(b)(III) amended, (SB 10-175), ch. 188, p. 790, § 40, effective April 29.

Editor's note: This section was formerly numbered as 19-2-1103. Prior to relocation in 1996, the said section 19-2-1103 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975).

19-2-923. Juveniles committed to department of human services - transfers. (1) The executive director of the department of human services may transfer any juvenile committed under section 19-2-601 or 19-2-907 among the facilities established under sections 19-2-403 and 19-2-406 to 19-2-408; except that, before any juvenile is transferred, he or she shall be examined and evaluated, and such evaluation shall be reviewed by the said executive director before he or she approves the transfer.

(2) When the executive director of the department of human services finds that the welfare and protection of a juvenile or of others requires the juvenile's immediate transfer to another facility, he or she shall make the transfer prior to having the juvenile examined and evaluated.

(3) (a) Any juvenile committed to the department of human services may be transferred temporarily to any state treatment facility for persons with mental illness or developmental disabilities for purposes of diagnosis, evaluation, and emergency treatment; except that no juvenile may be transferred to a mental health facility until the juvenile has received a mental health hospital placement prescreening resulting in a recommendation that the juvenile be placed in a facility for evaluation pursuant to section 27-65-105 or 27-65-106, C.R.S. No juvenile committed to the department as an aggravated juvenile offender or violent juvenile offender shall be transferred until the treatment facility has a secure setting in which to house the juvenile. The period of temporary transfer pursuant to this paragraph (a) shall not exceed sixty days.

(b) When a juvenile has remained in the treatment facility for sixty days, the treatment facility shall determine whether the juvenile requires further treatment or services, and, if so, the treatment facility shall confer with the sending facility concerning continued placement. If both facilities agree that the juvenile should remain in the treatment facility, the executive director of the department of human services shall be notified of the recommendation, and he or she may authorize an additional sixty-day placement. When an additional placement is authorized, the court shall be notified of the transferred placement.

(c) During each subsequent sixty-day placement period, the juvenile shall be reevaluated by both the treatment facility and the sending facility to determine the need for continued transferred placement. The juvenile shall remain in transferred placement until the facilities agree that such placement is no longer appropriate. At that time the juvenile shall be transferred back to the sending facility or to any other facility that the department determines to be appropriate. The period of placement shall not exceed the length of the original commitment to the department of human services unless authorized by the court after notice and a hearing.

(d) When a juvenile is in continued transferred placement and the treatment facility and the sending facility agree that the need for placement of the juvenile is likely to continue beyond the original period of commitment to the department of human services, the treatment facility shall initiate proceedings with the court having jurisdiction over the juvenile under article 65 of title 27, C.R.S., if the juvenile has a mental illness or under article 10.5 of title 27, C.R.S., if the juvenile has developmental disabilities.

Source: L. 96: Entire article amended with relocations, p. 1670, § 1, effective January 1, 1997. **L. 2002:** (3)(a) amended, p. 579, § 15, effective May 24. **L. 2006:** (3)(a) and (3)(d) amended, p. 1401, § 56, effective August 7. **L. 2010:** (3)(a) and (3)(d) amended, (SB 10-175), ch. 188, p. 790, § 41, effective April 29.

Editor's note: This section was formerly numbered as 19-2-1104. Prior to relocation in 1996, the said section 19-2-1104 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-8-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The general assembly intended to segregate children found to be in need of supervision from delinquents by providing that the former may not be initially placed in institutions for juvenile delinquents nor may they be transferred by the director of institutions to such institutions without approval of court. The general assembly also set up separate sections of the statute to separate the disposition and punishment of those adjudicated as children in need of supervision from those adjudicated as delinquent. People in Interest of D.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Applied in Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975).

19-2-924. Juveniles committed to department of human services - emergency release. The department of human services and the judicial department shall establish guidelines for the emergency release of juveniles committed to the custody of the department of human services during periods of crisis overcrowding of facilities operated by such department. Such guidelines shall take into consideration the best interests of juveniles, the capacity of individual facilities, and the safety of the public.

Source: L. 96: Entire article amended with relocations, p. 1671, § 1, effective January 1, 1997.

Editor's note: This section was formerly numbered as 19-2-1607.

19-2-924.5. Juveniles committed to department of human services - genetic testing - repeal. (Repealed)

Source: L. 2000: Entire section added, p. 924, § 17, effective July 1. **L. 2002:** Entire section amended, p. 1154, § 11, effective July 1; (1)(a) amended, p. 1188, § 27, effective July 1. **L. 2006:** (5) added by revision, pp. 1690, 1693, §§ 11, 17.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, pp. 1690, 1693.)

19-2-924.7. Juveniles committed to the department of human services - prohibition against the use of restraints on pregnant juveniles. (1) The staff of the department of human services, in restraining a female juvenile committed to the department of human services or detained in a juvenile facility, shall use the least restrictive restraints necessary to ensure safety if the staff have actual knowledge or a reasonable belief that the juvenile is pregnant. The requirement that staff use the least restrictive restraints necessary to ensure safety shall continue during postpartum recovery and transport to or from a juvenile facility.

(2) (a) (I) Staff of the department of human services or medical facility staff shall not use restraints of any kind on a pregnant juvenile during labor and delivery of the child; except that staff may use restraints if:

(A) The medical staff determine that restraints are medically necessary for safe childbirth;

(B) The staff of the department of human services or medical staff determine that the juvenile presents an immediate and serious risk of harm to herself, to other patients, or to medical staff; or

(C) The staff of the department of human services determine that the juvenile poses a substantial risk of escape that cannot reasonably be reduced by the use of other existing means.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (a) to the contrary, under no circumstances shall staff use leg shackles or waist restraints on a juvenile during labor and delivery of the child, postpartum recovery while in a medical facility, or transport to or from a medical facility for childbirth.

(b) The staff of the department of human services or medical facility authorizing the use of restraints on a pregnant juvenile during labor or delivery of the child shall make a written record of the use of restraints, which record shall include, at a minimum, the type of restraint used, the circumstances that necessitated the use of the restraint, and the length of time the restraint was used. The department of human services staff shall retain the record for a minimum of five years and shall make the record available for public inspection with individually identifying information redacted from the record unless the juvenile who is the subject of the record gives prior written consent for the public release of the record. The written record of the use of restraint shall not constitute a medical record under state or federal law.

(3) Upon return to a department of human services facility after childbirth, the juvenile shall be entitled to have a member of the department of human services' medical staff present during any strip search.

(4) When a juvenile's pregnancy is determined, the staff of the department of human services shall inform a pregnant juvenile committed to the department of human services in writing in a language and in a manner understandable to the juvenile of the provisions of this section concerning the use of restraints and the presence of medical staff during a strip search.

(5) The executive director of the department of human services shall ensure that the staff of the department of human services receive adequate training concerning the provisions of this section.

Source: L. 2010: Entire section added, (SB 10-193), ch. 312, p. 1466, § 3, effective January 1, 2011.

19-2-925. Probation - terms - release - revocation. (1) (a) The terms and conditions of probation shall be specified by rules or orders of the court. The court, as a condition of probation for a juvenile who is ten years of age or older but less than eighteen years of age on the date of the sentencing hearing, may impose a commitment or detention. The aggregate length of any such commitment or detention, whether continuous or at designated intervals, shall not exceed forty-five days; except that such limit shall not apply to any placement out of the home through a county department of social services. Each juvenile placed on probation shall be given a written statement of the terms and conditions of his or her probation and shall have such terms and conditions fully explained to him or her.

(b) The court, as a condition of probation for a juvenile eighteen years of age or older at the time of sentencing for delinquent acts committed prior to his or her eighteenth birthday, may impose as a condition of probation a sentence to the county jail that shall not exceed ninety days; except that such sentence may be for a period of up to one hundred eighty days if the court orders the juvenile released for school attendance, job training, or employment.

(2) The court shall, as minimum conditions of probation, order that the juvenile:

(a) Not violate any federal or state statutes, municipal ordinances, or orders of the court;

(b) Not consume or possess any alcohol or use any controlled substance without a prescription;

(c) Not use or possess a firearm, a dangerous or illegal weapon, or an explosive or incendiary device, unless granted written permission by the court or probation officer;

(d) Attend school or an educational program or work regularly at suitable employment, and, if the juvenile has an individualized education program pursuant to section 22-20-108, C.R.S., the court may order the juvenile to comply with his or her individualized education program, taking into account the intellectual functioning, adaptive behavior, and emotional behaviors associated with the juvenile's disabilities, and subject to a manifestation determination pursuant to section 22-33-106 (1) (c), C.R.S.; except that the court shall not require any such juvenile to attend a school from which he or she has been expelled without the prior approval of that school's local board of education;

(e) Report to a probation officer at reasonable times as directed by the court or probation officer;

(f) Permit the probation officer to visit the juvenile at reasonable times at his or her home or elsewhere;

(g) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;

(h) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;

(i) Make restitution as ordered by the court;

(j) Pay the victim compensation fee as ordered by the court;

(k) Pay the surcharge levied pursuant to section 24-4.2-104 (1) (a) (I), C.R.S.; and

(l) May be evaluated to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's probation program; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a delinquent for unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., a crime in which the underlying factual basis involves domestic violence as defined in section 18-6-800.3 (1), C.R.S., stalking as defined in section 18-3-602, C.R.S., or violation of a protection order as defined in section18-6-803.5, C.R.S.

(3) (a) The court may periodically review the terms and conditions of probation and the progress of each juvenile placed on probation. Counsel for the juvenile does not have to be present at any probation review hearing unless notified by the court that a petition to revoke probation has been filed.

(b) The court may release a juvenile from probation or modify the terms and conditions of his or her probation at any time, but any juvenile who has complied satisfactorily with the terms and conditions of his or her probation for a period of two years shall be released from probation, and the jurisdiction of the court shall be terminated.

(4) (a) When it is alleged that a juvenile has violated the terms and conditions of his or her probation, the court shall set a hearing on the alleged violation and shall give notice to the juvenile and his or her parents, guardian, or other legal custodian and any other parties to the proceeding as provided in section 19-2-514.

(b) The juvenile and his or her parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

(c) When the juvenile has been taken into custody because of the alleged violation, the provisions of sections 19-2-507 and 19-2-508 shall apply.

(d) (I) The hearing on the alleged violation shall be conducted as provided in section 19-1-106.

(II) Subject to the provisions of section 19-2-907, if the court finds that the juvenile violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this article that is in the best interest of the juvenile and the public.

(III) If the court finds that the juvenile did not violate the terms and conditions of his or her probation as alleged, it shall dismiss the proceedings and continue the juvenile on probation under the terms and conditions previously prescribed.

(e) If the court revokes the probation of a person over eighteen years of age, in addition to other action permitted by this article, the court may sentence him or her to the county jail for a period not to exceed one hundred eighty days during which time he or she may be released during the day for school attendance, job training, or employment, as ordered by

the court; except that, if the sentence imposed exceeds ninety days, the court shall order the person released for school attendance, job training, or employment while serving his or her sentence.

(5) Following specification of the terms and conditions of probation, where the conditions of probation include requiring the juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of such requirement.

Source: L. 96: Entire article amended with relocations, p. 1671, § 1, effective January 1, 1997. **L. 99:** (1) and (4)(e) amended, p. 1372, § 5, effective July 1; (2)(d) amended, p. 59, § 2, effective July 1. **L. 2003:** (2)(d) amended, p. 1806, § 2, effective August 6. **L. 2008:** (2)(j) and (2)(k) amended and (2)(l) added, p. 227, § 6, effective March 31. **L. 2011:** (2)(l) amended, (HB 11-1032), ch. 296, p. 1407, § 16, effective August 10.

Editor's note: This section was formerly numbered as 19-2-705. Prior to relocation in 1996, the said section 19-2-705 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-3-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Colorado's New Court System", see 41 Den. L. Ctr. J. 140 (1964). For article, "The Mandate to Use Special Education at Juvenile Delinquency Sentencings", see 32 Colo. Law. 99 (October 2003).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Probation is a privilege rather than a right, suspending conditionally what might be a harsher judgment as a contract with the convicted person, made by a court and sanctioned by statute, that he may remain free so long as his conduct is good and he genuinely attempts to rehabilitate himself. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Granting of probation in lieu of incarceration is act of grace within sound discretion of juvenile court. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Court's jurisdiction retained until terminated by court order. A court need not be apprised of a probation violation through the timely filing of a petition to revoke or modify probation to retain jurisdiction. Jurisdiction is retained until terminated by court order. People in Interest of Maddox v. Dist. Court, 198 Colo. 208, 597 P.2d 573 (1979).

Loss of jurisdiction results when the court signs an order terminating probation. The plain language of this section clearly authorizes a juvenile court to release a probationer before the probationary period is completed. The court order is a "release" even if entered by mistake. People in Interest of M.T., 950 P.2d 669 (Colo. App. 1997).

The Colorado rules of civil procedure apply only to juvenile matters that are not governed by the Colorado Children's Code. Therefore, the People's argument that a juvenile court's termination order entered by mistake is without effect pursuant to C.R.C.P. 60 is inapplicable. People in Interest of M.T., 950 P.2d 669 (Colo. App. 1997).

Section provides for review of probation terms. This section provides for review of the terms and conditions of probation at least once each six months. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

The power of a court to impose conditions of probation must be strictly construed from the applicable statutes. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

Authority to suspend a sentence of detention entered as a condition of probation is within the power of the juvenile court in imposing the conditions of probation. People in Interest of J.J., 768 P.2d 754 (Colo. App. 1988).

No authority to impose limited confinement in county jail as condition of probation. A juvenile court does not have the statutory authority to impose a limited or partial confinement in county jail as a condition of probation for a juvenile under 18 years of age. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

Section meets requirements of due process. Because subsection (4) requires notice and a hearing in cases of alleged violation of juvenile probation and because the prosecution must establish the alleged criminal offense beyond a reasonable doubt, the statutory scheme by which probation revocation triggers mandatory sentence offender status does not deny due process. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Due process requirements met even though findings of fact were inadequate because general record supports revocation of probation. Even though trial court's findings of fact concerning ability of child to pay restitution were

inadequate to revoke probation on that ground, record supports revocation of child's probation on other grounds and is consistent with due process requirements of fundamental fairness and appellate court will not set aside revocation where court's general finding is adequate. People in Interest of C.J.W., 727 P.2d 870 (Colo. App. 1986).

Section provides notice and hearing before revocation. In the event that a child violates the terms and conditions of a child in need of supervision probation, this section provides for notice to the child, his parents, guardian, or other legal custodian, and a full hearing on the matter to determine whether these conditions and terms were in fact violated. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

But probation revocation hearings are not adjudicatory hearings. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

And dispositional hearing and social study not required. Where hearing emanated from petition to revoke probation of child and not from petition for delinquency adjudication or in need of supervision, child was not entitled to dispositional hearing and social study. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Question of whether probation shall be revoked is within sound discretion of judge. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Revocation justified upon commission of criminal acts. Where a court finds that a child on probation has committed acts which if committed by an adult would be crimes, these findings are sufficient to justify revocation of probation, and the fact that they were filed subsequent to the order recommitting the child and directing issuance of the mittimus is not prejudicial. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Where juvenile court judge is convinced that minor whose probation terms include requirements that he violate no law has been involved in bicycle theft, has been accessory after or during fact, or has engaged in joyriding, judge is justified in revoking probation. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Burden of proof for probation violations which constitute adult crimes. Minimal due process guarantees of fundamentally fair procedures require no less than proof "beyond a reasonable doubt" of juvenile probation violations based upon alleged acts which would constitute crimes if done by adults. People in Interest of C.B., 196 Colo. 362, 585 P.2d 281 (1978).

The standard of proof required in juvenile probation revocation hearings is proof beyond a reasonable doubt of violations based upon alleged acts which would constitute crimes if done by an adult. People in Interest of G.L., 631 P.2d 1118 (Colo. 1981).

Revocation of probation is not equivalent to finding of guilt on charges alleged in revocation petition. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Review of probation violation is exclusive. As to those acts of a child in violation of child in need of supervision probation which are not denominated as acts of delinquency, the method of review in this section was intended to be exclusive. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Effect of breach of probation. A probationer is charged with the knowledge that a breach of probationary terms will result in a revocation of probation and a subsequent sentence. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Revoking juvenile's probation does not undertake to punish him for new offense. Rather, it is imposition of sentence for earlier adjudication. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Standard of proof. The same standard of proof that obtains in adult probation revocation hearings, i.e., beyond a reasonable doubt, should also apply in juvenile proceedings. People in Interest of C.B., 40 Colo. App. 43, 572 P.2d 843 (1977).

Admissibility of hearsay statements. In probation revocation hearing trial court is not bound by strict rules of evidence and even if hearsay statements are improperly admitted a presumption arises that the evidence was disregarded and, therefore, trial court did not err in admitting testimony which in part consisted of hearsay. People in Interest of C.J.W., 727 P.2d 870 (Colo. App. 1986).

Alternative dispositions permitted. When a violation of probation has been established, the court is permitted a range of alternative dispositions, including any delineated in the respective sections of the code. People in Interest of C.B., 40 Colo. App. 43, 572 P.2d 840 (1977).

Issue preclusion does not apply to bar the right of a defendant to a trial where defendant had been charged with the crime of driving with a revoked license, which constituted both a violation of his probation and a new criminal act. Defendant did not have a full and fair opportunity to litigate the issue in the probation revocation hearing. A determination of guilt or innocence in a probation revocation hearing would undermine the function of the criminal trial process. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Probation revocation hearings are held for different purposes, governed by different procedures, and do not protect a defendant's rights as does a criminal trial. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Applied in People in Interest of R.J.A., 38 Colo. App. 346, 556 P.2d 491 (1976).

19-2-925.5. Genetic testing - repeal. (Repealed)

Source: L. 2000: Entire section added, p. 924, § 17, effective July 1. **L. 2002:** Entire section amended, p. 1154, § 12, effective July 1; (1)(a) amended, p. 1188, § 28, effective July 1. **L. 2006:** (5) added by revision, pp. 1690, 1693, §§ 12, 17.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, pp. 1690, 1693.)

19-2-925.6. Genetic testing of adjudicated offenders - definitions. (1) Beginning July 1, 2007, each of the following adjudicated offenders shall submit to and pay for collection and a chemical testing of the offender's biological substance sample to determine the genetic markers thereof, unless the offender has already provided a biological substance sample for such testing pursuant to a statute of this state:

(a) Every offender who, on or after July 1, 2007, is in the custody of the department of human services for a commitment imposed before that date, including an offender on parole, based on adjudication for an offense involving unlawful sexual behavior, or for which the underlying factual basis involved an offense involving unlawful sexual behavior. The department shall collect the sample as soon as possible.

(b) Every offender who, on or after July 1, 2007, is on probation or supervision for a sentence that was imposed before that date, or is on a deferred adjudication that was before that date, for an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The judicial department shall collect the sample at least thirty days prior to the offender's scheduled termination of probation, supervision, or deferred adjudication.

(c) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility for a sentence imposed before that date based on adjudication for an offense that would constitute a felony if committed by an adult. The sheriff or the community corrections program shall collect the sample at least thirty days prior to the offender's release from the custody of the county jail or community corrections facility.

(d) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility for a sentence imposed before that date based on adjudication for a misdemeanor offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The sheriff or the community corrections program shall collect the sample at least thirty days prior to the offender's release from the custody of the county jail or community corrections facility.

(e) Every offender sentenced on or after July 1, 2007, for an offense that would constitute a felony if committed by an adult. This paragraph (e) shall not apply to an offender granted a deferred adjudication, unless otherwise required to submit to a sample pursuant to this section or unless the deferred adjudication is revoked and a sentence is imposed. The sample shall be collected:

(I) From an offender committed to the department of human services, by the department during the intake process but in any event within thirty days after the offender is received by the department;

(II) From an offender sentenced to county jail or to community corrections, by the sheriff or by the community corrections program within thirty days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty days after the offender is placed on probation; and

(IV) From an offender who receives any other sentence, by the judicial department within thirty days after the offender is sentenced.

(f) Every offender who, on or after July 1, 2007, is sentenced for an adjudication of, or who receives a deferred adjudication for, an offense involving unlawful sexual behavior or

for which the underlying factual basis involves unlawful sexual behavior. The sample shall be collected:

(I) From an offender committed to the department of human services, by the department during the intake process but in any event within thirty days after the offender is received by the department;

(II) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections facility within thirty days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty days after the offender is placed on probation;

(IV) From an offender who receives a deferred adjudication, by the judicial department within thirty days after the offender is granted the deferred adjudication; and

(V) From an offender who receives any other sentence, by the judicial department within thirty days after the offender is sentenced.

(2) For purposes of this section:

(a) "Adjudicated" means having received a verdict of guilty by a judge or jury or having pled guilty or nolo contendere. Except where otherwise indicated, "adjudicated" does not include deferred adjudication unless the deferred adjudication is revoked and a sentence is imposed.

(b) "Unlawful sexual behavior" shall have the same meaning as in section 16-22-102 (9), C.R.S.

(3) The judicial department, the department of human services, a sheriff, or a contractor may:

(a) Use reasonable force to obtain biological substance samples in accordance with this section using medically recognized procedures. In addition, an offender's refusal to comply with this section may be grounds for revocation or denial of parole, probation, or deferred adjudication. Failure to pay for collection and a chemical testing of a biological substance sample shall be considered a refusal to comply if the offender has the present ability to pay.

(b) Collect biological substance samples notwithstanding that the collection was not accomplished within an applicable deadline set forth in this section.

(4) Any moneys received from an offender pursuant to this section shall be deposited in the offender identification fund created in section 24-33.5-415.6, C.R.S.

(5) The Colorado bureau of investigation shall conduct the chemical testing of the biological substance samples obtained pursuant to this section. The Colorado bureau of investigation shall file and maintain the results thereof and shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this section.

Source: L. 2006: Entire section added, p. 1690, § 13, effective July 1, 2007. **L. 2007:** Entire section R&RE, p. 1616, § 2, effective July 1.

19-2-926. Juvenile probation officers - powers and duties. (1) Juvenile probation officers appointed under the provisions of section 19-2-204 shall make such investigations and keep written records thereof as the court may direct.

(2) When any juvenile is placed on probation, the juvenile probation officer shall give the juvenile a written statement of the terms and conditions of his or her probation and shall explain fully such terms and conditions to him or her, unless such statement has been given him or her and explanation made by the court pursuant to section 19-2-925.

(3) (a) Each juvenile probation officer shall keep informed as to the condition and conduct of each juvenile placed under his or her supervision and shall report thereon to the court as it may direct.

(b) Each juvenile probation officer shall use all suitable methods, including counseling, to aid each juvenile under his or her supervision and shall perform such other duties in connection with the care and custody of juveniles as the court may direct.

(c) Each juvenile probation officer shall keep complete records of all work done, as well as complete accounts of all money collected from those under supervision.

(4) Juvenile probation officers, for the purpose of performing their duties, shall have all the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138, C.R.S.

(5) (a) When a juvenile probation officer learns that a juvenile under his or her supervision has changed his or her residence to another county, temporarily or permanently, such officer shall immediately notify the court.

(b) If, after such notification, the court determines that it is in the best interest of the juvenile to transfer jurisdiction to the court in the county in which the juvenile resides or is to reside, the court shall immediately notify such court and shall enter an order transferring jurisdiction to such court. The court transferring jurisdiction pursuant to this paragraph (b) shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, together with the order transferring jurisdiction. The receiving court shall proceed with the case as if the petition had been originally filed in said court.

Source: L. 96: Entire article amended with relocations, p. 1673, § 1, effective January 1, 1997. **L. 2003:** (4) amended, p. 1627, § 58, effective August 6.

Editor's note: This section was formerly numbered as 19-2-1002. Prior to relocation in 1996, the said section 19-2-1002 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-5-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

PART 10

POSTSENTENCE

Cross references: For provisions relating to volunteerism in connection with juvenile parole, see article 31 of title 17.

19-2-1001. Short title. This part 10 shall be known and may be cited as "Postsentence".

Source: L. 96: Entire article amended with relocations, p. 1674, § 1, effective January 1, 1997.

Editor's note: The former section 19-2-1001 was relocated to section 19-2-204.

19-2-1002. Juvenile parole. (1) **Juvenile parole board - hearing panels authority.** (a) The juvenile parole board, referred to in this part 10 as the "board", established pursuant to section 19-2-206 is authorized to grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole for any juvenile committed to the department of human services as provided in sections 19-2-601 and 19-2-907. In addition to any other conditions, the board may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or a GED, as that term is defined in section 22-33-102 (7), C.R.S.; except that the board shall not require any such juvenile to attend a school from which he or she has been expelled without the prior approval of that school's local board of education. The board may modify any of its decisions, or those of the hearing panel, except an order of discharge.

(b) (Deleted by amendment, L. 2008, p. 1098, § 3, effective July 1, 2008.)

(2) (a) The board or a hearing panel shall have subpoena power and the power to administer oaths to secure attendance and testimony at hearings before the board. All relevant records pertaining to the juvenile shall be made available to the board.

(b) The board or hearing panel shall take into consideration the results of the objective risk assessment administered by the department of human services.

(3) (a) Hearing panels consisting of two members of the board shall interview and review the record of each juvenile who comes before the board for the granting of parole. Whenever possible, one of the hearing panel members shall be a representative of an

executive department, and the other shall be a member from the public at large. A hearing panel may grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole of a juvenile that are in the best interests of the juvenile and the public; except that:

(I) If the members of a hearing panel disagree, a review of that case shall be referred to the board for review and a decision made by a majority vote of the board members present. At least a quorum, as defined in section 19-2-206 (4), of the board must be present to a make a decision under this subparagraph (I).

(II) The hearing panel shall not have authority to grant parole to juveniles committed as violent juvenile offenders as described in section 19-2-516 (3) or aggravated juvenile offenders as described in section 19-2-516 (4). In such cases, the board shall conduct a hearing and make a decision by a majority vote of the board members present at the hearing. However, if expiration of the juvenile's commitment is imminent, as defined by the juvenile parole board, the hearing panel shall hold a hearing and make a recommendation to the board. The board shall review the case and a make a decision by a majority vote of the board members present.

(III) If a written request is made by the juvenile, his or her parents, his or her guardian, or the executive director of the department of human services or his or her designee, the board may review the case of any juvenile who has been interviewed by a hearing panel. If such a review is made, the board shall have the authority to affirm or reverse the decision of the hearing panel or to impose such additional conditions for parole as the board deems appropriate.

(IV) (Deleted by amendment, L. 2008, p. 1098, § 3, effective July 1, 2008.)

(a.5) If a juvenile, while under a juvenile commitment, is in jail pending adult charges, the board may conduct a parole hearing without the presence of the juvenile.

(a.7) When the board conducts a hearing pursuant to paragraph (a) or (a.5) of this subsection (3), a quorum, as defined in section 19-2-206 (4), shall be present.

(b) (I) In addition to any other conditions, the hearing panel may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or a GED, as that term is defined in section 22-33-102 (7), C.R.S.; except that the hearing panel shall not require any such juvenile to attend a school from which he or she has been expelled without the prior approval of that school's local board of education.

(II) (Deleted by amendment, L. 2008, p. 1098, § 3, effective July 1, 2008.)

(4) The hearing panel shall be assisted in its duties by the juvenile parole board administrator appointed pursuant to section 19-2-206 (6). Said administrator shall also arrange training for the members of the juvenile parole board in all aspects of the juvenile justice system. It shall be mandatory for members of the board to attend such training.

(5) (a) If the hearing panel or the board determines that parole should be granted, the hearing panel shall establish six months as the length of the parole supervision. However, for a juvenile committed to the department of human services due to an adjudication for an offense specified in paragraph (b) of this subsection (5), the hearing panel may extend the period of parole supervision up to an additional fifteen months if the hearing panel makes findings of special circumstances that warrant an extended period of parole services for the juvenile.

(b) The provisions of paragraph (a) of this subsection (5) allowing for extension of the period of parole shall apply to juveniles committed to the department of human services due to an adjudication for one or more of the following offenses:

(I) Any offense specified in article 3 of title 18 or in part 3 of article 4 of title 18, C.R.S., that would constitute a felony if committed by an adult;

(II) Incest, as described in section 18-6-301, C.R.S.;

(III) Aggravated incest, as described in section 18-6-302, C.R.S.;

(IV) Child abuse, as described in section 18-6-401, C.R.S., that would constitute a felony if committed by an adult;

(V) Fourth degree arson, as described in section 18-4-105, C.R.S., that would constitute a felony if committed by an adult;

(VI) Assault during escape, as described in section 18-8-206, C.R.S., that would constitute a felony if committed by an adult;

(VII) Illegal possession of a handgun by a juvenile, as described in section 18-12-108.5, C.R.S., that would constitute a felony if committed by an adult;

(VIII) Illegal possession of a handgun by a juvenile, as described in section 18-12-108.5, C.R.S., that would constitute a misdemeanor if committed by an adult, if the juvenile is contemporaneously committed to the department of human services for an offense that would constitute a felony if committed by an adult; or

(IX) Attempt, conspiracy, or solicitation to commit any of the offenses specified in this paragraph (b), which attempt, conspiracy, or solicitation would constitute a felony if committed by an adult.

(c) Upon completion of the period of parole supervision as established by the board, the juvenile shall be deemed to have discharged the juvenile's sentence to commitment in the same manner as if the sentence were discharged pursuant to law.

(d) (I) If the juvenile court commits a juvenile to the department of human services for concurrent sentences based on the commission of two or more offenses or consecutive sentences based on commission of two or more offenses, the juvenile shall be subject to one six-month mandatory period of parole, unless the period of parole is extended pursuant to paragraph (a) of this subsection (5).

(II) As used in this paragraph (d), "concurrent sentence" means sentences identified by the court as concurrent and any sentences, or portions thereof, that are served simultaneously and that are the basis of the juvenile's treatment services during the juvenile's commitment.

(e) (I) If a juvenile's parole is revoked pursuant to section 19-2-1004, the juvenile shall serve all or a portion of the remainder of his or her sentence to commitment, and the period of reparole or extended period of reparole imposed pursuant to paragraph (a) of this subsection (5), shall be reduced by any time served on parole prior to the revocation. The provisions of this paragraph (e) shall not limit the board's authority to grant, deny, defer, suspend, revoke, or modify a juvenile's parole within the period of parole.

(II) If a juvenile's parole is revoked or modified pursuant to section 19-2-1004, and the juvenile has completed the period of commitment imposed by the court, the period of parole, or extended period of parole imposed pursuant to paragraph (a) of this subsection (5), shall continue pursuant to section 19-2-909 (1) (c) (II). The period of parole shall continue regardless of whether the revocation or modification authorizes the department of human services to place the juvenile in a residential placement while on parole status. This provision shall not limit the board's authority to grant, deny, defer, suspend, revoke, or modify a juvenile's parole within the period of parole.

(6) If the hearing panel or the board determines that parole should be granted, the parolee shall be ordered to pay any unpaid restitution that has previously been ordered as a condition of parole.

(7) **Notice.** (a) The board, prior to consideration of the case of a juvenile for parole, shall notify the committing court, any affected juvenile community review board, the prosecuting attorney, and any victims of the juvenile's actions whose names and addresses have been provided by the district attorney of the time and place of the juvenile's hearing before the board or a hearing panel of the board. The notice shall be given in order that the persons notified will have an opportunity to present written testimony to the hearing panel or the board. The board, in its sole discretion, may allow oral testimony at any hearing and has sole discretion regarding who may attend a juvenile parole hearing.

(b) (I) (A) Prior to consideration of the case of a juvenile for parole, the board shall provide notice of the time and place of the juvenile's hearing before the board or a hearing panel of the board to a victim who has provided to the division of youth corrections or the board a written statement pursuant to sections 24-4.1-302.5 and 24-4.1-303, C.R.S. The notice and subsequent interactions with the victim shall be consistent with the provisions of article 4.1 of title 24, C.R.S.

(B) The board shall notify the victim of changes in the juvenile's parole pursuant to section 24-4.1-303 (14.3), C.R.S.

(II) For a youth that is currently serving parole that implicates the provisions of article 4.1 of title 24, C.R.S., the division of youth corrections shall notify the board of any discharge as a matter of law and any placement change that may impact public safety or

victim safety as determined by the division of youth corrections, including any escape or recapture.

(8) **Representation of juvenile - parent.** The juvenile and his or her parents or guardian shall be informed that they may be represented by counsel in any hearing before the board or a hearing panel to grant, modify, or revoke parole.

(9) **Parole discharge.** (a) The board may discharge a juvenile from parole after the juvenile has served the mandatory parole period of six months but prior to the expiration of his or her period of parole supervision when it appears to the board that there is a reasonable probability that the juvenile will remain at liberty without violating the law.

(b) (I) Based upon a request and recommendation by the division of youth corrections, the board may discharge all or a portion of a juvenile's period of parole, as defined in section 19-2-909 (1) (b), without holding a hearing before the board or a hearing panel of the board, if the board finds that:

(A) The juvenile is unavailable to complete the period of parole or the extended period of parole and the juvenile is not likely to become available in a time or manner in which he or she will benefit from parole services and neither community safety nor restorative justice interests will be served through the imposition or continuation of the juvenile's parole; or

(B) The community interest in safety or restorative justice will not be served through the imposition or continuation of juvenile parole because the juvenile is under the adult probation supervision of the district court.

(II) As used in this subsection (9), a juvenile is unavailable to complete the period of parole if:

(A) The juvenile, pursuant to an adult sentence, has been placed in a department of corrections facility, adult community corrections, the youthful offender system, or a local jail as defined in section 17-1-102, C.R.S.; or

(B) The juvenile has been or will be transferred out of the state of Colorado and the division of youth corrections determines that the discharge is not in conflict with the interstate compact on juveniles, part 7 of article 60 of title 24, C.R.S.; or

(C) The juvenile is in a medical, mental, or treatment facility or similar institution; or

(D) The board finds any other circumstance that constitutes unavailability as established in rule.

(c) The board may discharge a juvenile from parole before completion of the mandatory six-month parole period when the board finds that the juvenile meets, at a minimum, all of the following conditions of special achievement:

(I) Graduation from a public or accredited nonpublic high school or completion of a GED, as that term is defined in section 22-33-102 (7), C.R.S.;

(II) Payment of one hundred percent of any restitution the juvenile has been ordered to pay;

(III) Certification by the juvenile's parole officer that the juvenile is ready for discharge from parole, which shall take into consideration the results of an objective risk assessment conducted by the department of human services and shall be based upon researched factors that have been demonstrated to be correlative to risk to the community; and

(IV) Presentation to the board of a plan of action prepared by the juvenile that includes the steps the juvenile will accomplish to ensure his or her transition to law-abiding citizenship. If the juvenile's plan of action includes an intent to enlist in military service, the plan shall specify the interim steps that the juvenile will take prior to entering military service.

(d) A discharge from parole pursuant to this subsection (9) shall have the same legal effect as if parole had been discharged upon completion of juvenile parole or when the sentence to commitment was discharged as a matter of law.

(10) Notwithstanding any provisions of law to the contrary, the department of human services shall not retain custody of or jurisdiction over an individual who reaches twenty-one years of age. The sentence to commitment and the period of parole are discharged as a matter of law when a juvenile reaches twenty-one years of age.

Source: L. 96: Entire article amended with relocations, p. 1674, § 1, effective January 1, 1997. **L. 99:** (1) and (3) amended, p. 60, § 3, effective July 1. **L. 2001:** (3)(a)(IV) added, p. 819, § 2, effective July 1; (5) amended, p. 584, § 3, effective July 1. **L. 2003:** (5)(c) and (5)(d) added and (9) amended, p. 767, §§ 1, 2, effective March 25; IP(5)(a) and (9) amended, pp. 1518, 1519, §§ 3, 4, effective May 1. **L. 2005:** (3)(a) and (5)(d) amended and (3)(a.5) and (3)(a.7) added, p. 271, § 1, effective April 14. **L. 2006:** (9) amended, p. 221, § 1, effective March 31. **L. 2008:** (1)(b), (2), IP(3)(a), (3)(a)(IV), (3)(b)(II), (5), (7), and (9) amended and (10) added, p. 1098, § 3, effective July 1. **L. 2012:** (1)(a), (3)(b)(I), and (9)(c)(I) amended, (HB 12-1345), ch. 188, p. 748, § 39, effective May 19.

Editor's note: (1) This section was formerly numbered as 19-2-1202 and 19-2-1207. Prior to relocation in 1996, the said section 19-2-1202 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-9-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title. The said section 19-2-1207 was enacted in 1996 when this article was amended with relocations.

(2) The former section 19-2-1002 was located to section 19-2-926 when this article was amended with relocations in 1996.

Cross references: (1) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2016, see sections 21 and 46 of chapter 188, Session Laws of Colorado 2012. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

(2) For the legislative declaration in the 2012 act amending subsections (1)(a), (3)(b)(I), and (9)(c)(I), see section 21 of chapter 188, Session Laws of Colorado 2012.

19-2-1003. Parole officers - powers - duties. (1) Under the direction of the director of the division of youth corrections, the juvenile parole officer or officers in each region established in section 19-2-209 (3) shall supervise all juveniles living in the region who, having been committed to the department of human services, are on parole from one of its facilities.

(2) The juvenile parole officer shall give to each juvenile granted parole a written statement of the conditions of his or her parole, shall explain such conditions fully, and shall aid the juvenile to observe them. He or she shall have periodic conferences with and reports from the juvenile. The juvenile parole officer may conduct such investigations or other activities as may be necessary to determine whether the conditions of parole are being met and to accomplish the rehabilitation of the juvenile.

(3) All juvenile parole officers shall have the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138, C.R.S., in performing the duties of their position.

Source: L. 96: Entire article amended with relocations, p. 1676, § 1, effective January 1, 1997. **L. 2003:** (3) amended, p. 1627, § 59, effective August 6. **L. 2008:** (1) amended, p. 1103, § 4, effective July 1.

Editor's note: This section was formerly numbered as 19-2-1205. Prior to relocation in 1996, the said section 19-2-1205 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-9-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-2-1004. Parole violation and revocation. (1) The director of the division of youth corrections or any juvenile parole officer may arrest any parolee when:

(a) He or she has a warrant commanding that such parolee be arrested; or

(b) He or she has probable cause to believe that a warrant for the parolee's arrest has been issued in this state or another state for any criminal offense or for violation of a condition of parole; or

(c) Any offense under the laws of this state has been or is being committed by the parolee in his or her presence; or

(d) He or she has probable cause to believe that a violation of law has been committed and that the parolee has committed such a violation; or

(e) He or she has probable cause to believe that a condition of the juvenile's parole has been violated by the parolee and probable cause to believe that the parolee is leaving or about to leave the state, or that the parolee will fail or refuse to appear before the hearing panel to answer charges of violations of one or more conditions of parole, or that the arrest of the parolee is necessary to prevent physical harm to the parolee or another person or to prevent the violation of a law.

(2) When an alleged parole violator is taken into custody, the director of the division of youth corrections or the juvenile parole officer shall notify the parents, guardian, or legal custodian of the juvenile without unnecessary delay.

(3) When a juvenile parole officer has reasonable grounds to believe that a condition of parole has been violated by any parolee, he or she may issue a summons requiring the parolee to appear before the hearing panel at a specified time and place to answer charges of violation of one or more conditions of parole. Such summons, unless accompanied by a copy of a complaint filed before the hearing panel seeking revocation or suspension of parole or modification of parole conditions, shall contain a brief statement of the alleged parole violation and the date and place thereof. Failure of the parolee to appear before the hearing panel as required by such summons shall be deemed a violation of a condition of parole.

(4) If, rather than issuing a summons, a parole officer makes an arrest of a parolee with or without a warrant or takes custody of a parolee who has been arrested by another, the parole officer shall place the parolee in the nearest local juvenile detention facility or shelter care facility approved by the department of human services, if under eighteen years of age, or in the nearest county jail, if eighteen years of age or older. Within forty-eight hours, not including Saturdays, Sundays, and legal holidays, the parole officer shall take one of the following actions:

(a) Notify the juvenile parole board that the parolee has been arrested or taken into custody and request that a juvenile parole preliminary hearing be conducted by an administrative law judge; or

(b) Request a court to conduct a juvenile parole preliminary hearing as a part of a detention hearing conducted as described in section 19-2-508, in which hearing the court shall make a finding as to whether there is probable cause to believe that the parolee has violated a condition of parole; or

(c) Obtain from the parolee a written agreement that the parolee waives his or her right to a juvenile parole preliminary hearing, which waiver shall also be signed by a parent or guardian of the parolee if the parolee is a juvenile; or

(d) Release the parolee if he or she is not subject to other actions that require his or her further detention.

(5) An administrative law judge shall, upon the request of the juvenile parole board, conduct a preliminary hearing in a case in which a parole violation has been alleged, to determine whether there is probable cause to believe that a condition of parole has been violated by the parolee, as provided in subsection (4) of this section.

(6) Whenever an administrative law judge schedules a preliminary hearing pursuant to subsection (5) of this section, the juvenile parole officer shall notify the parolee and his or her parent, guardian, or legal custodian of the following information:

(a) The date, the time, and the place of the preliminary hearing and the name of the administrative law judge;

(b) That the purpose of the hearing will be to determine whether there is probable cause to believe that the parolee has violated his or her parole;

(c) That at the preliminary hearing the parolee will be permitted to present evidence, either oral or documentary, in person or by other witnesses, in defense of any alleged parole violation;

(d) A statement of any alleged parole violation;

(e) A brief summary of the evidence tending to establish any alleged parole violation;

(f) That the parolee has the right to counsel at the preliminary hearing.

(7) At any preliminary hearing held pursuant to subsection (5) of this section, the administrative law judge shall hear such testimony as shall be offered and shall determine whether there is probable cause to believe that the parolee has violated his or her parole. If

probable cause has not been shown, the administrative law judge shall order the release of the parolee and shall make a written report of his or her findings to the juvenile parole board within ten days of the hearing. If the administrative law judge finds that probable cause exists to believe that the parolee has violated his or her parole, he or she shall order that the parolee be held to answer the charge before a hearing panel and shall order that the juvenile parole officer return the parolee without unnecessary delay to any of the juvenile corrections facilities of the department of human services pending a hearing before a hearing panel on the complaint for revocation, suspension, or modification of the juvenile's parole.

(8) Within ten working days after the finding of probable cause by the preliminary administrative law judge, the juvenile parole officer shall complete his or her investigation and either:

(a) File a complaint before the hearing panel in which the facts are alleged upon which a revocation of parole is sought; or

(b) Recommend to the director of the division of youth corrections, or his or her designee, that the parolee, if detained, be released and the violation proceedings be dismissed. The director, or his or her designee, shall determine whether to cause the violation proceedings to be dismissed, and, if he or she elects to cause dismissal, the parolee shall be released or notified that he or she is relieved of obligation to appear before the hearing panel. In such event, the director, or his or her designee, shall give written notification to the board of his or her action.

(9) A complaint filed by a juvenile parole officer in which revocation of parole is sought shall contain the name of the parolee, shall identify the violation charged and the condition or conditions of parole alleged to have been violated, including the date and approximate location thereof, and shall be signed by the juvenile parole officer. A copy thereof shall be given to the parolee and his or her parents, guardian, or legal custodian at least five days before a hearing on the complaint is held before the hearing panel.

(10) The board may order the detention of any parolee for failure to appear as required by the summons issued under subsection (3) of this section.

(11) At least five days before the appearance of a parolee before the hearing panel, the parolee and his or her parents, guardian, or legal custodian shall be advised in writing by the parole officer of the nature of the charges that are alleged to justify revocation or suspension of his or her parole and the substance of the evidence sustaining the charges; he or she shall be given a copy of the complaint unless he or she has already received one; he or she shall be informed of the consequences that may follow in the event his or her parole is revoked; and he or she shall be advised that, if the parolee denies the charges, a hearing will be held before the hearing panel, that, at the hearing, he or she may testify and present witnesses and documentary evidence in defense of the charges or in mitigation or explanation thereof, and that he or she has the right to counsel at the hearing.

(12) At the hearing before the hearing panel, if the parolee denies the violation, the division of youth corrections shall have the burden of establishing by a preponderance of the evidence the violation of a condition or conditions of parole. The hearing panel shall, when it appears that the alleged violation of conditions of parole consists of an offense with which the parolee is charged in a criminal case then pending, continue the parole violation hearing until the termination of the criminal proceeding. Any evidence having probative value shall be admissible regardless of its admissibility under exclusionary rules of evidence if the parolee is accorded a fair opportunity to rebut hearsay evidence. The parolee shall have the right to confront and to cross-examine adverse witnesses unless the administrative law judge specifically finds good cause for not allowing confrontation.

(13) If the hearing panel determines that a violation of a condition or conditions of parole has been committed, it shall hear further evidence related to the disposition of the parolee. At the conclusion of the hearing, the hearing panel shall advise the parties before it of its findings and recommendations and of their right to request a review before the board. Such review may be held if a written request is filed within ten days after the conclusion of the hearing before the hearing panel. If a review before the board is not requested or the right to review is waived, the findings and recommendations of the hearing panel, if unanimous, shall become the decision of the juvenile parole board unless the board on its own motion orders a review.

(14) The case of a juvenile alleged or found to have violated the conditions of his or her parole outside the state of Colorado shall be handled according to the provisions of the interstate compact on juveniles, part 7 of article 60 of title 24, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1676, § 1, effective January 1, 1997. **L. 2008:** IP(1), (2), (8)(b), (11), and (12) amended, p. 1103, § 5, effective July 1.

Editor's note: This section was formerly numbered as 19-2-1206 and 19-2-1203 (2). Prior to relocation in 1996, the said sections 19-2-1206 and 19-2-1203 (2) were contained in a title that was repealed and reenacted in 1987. Provisions of those sections, as they existed in 1987, are similar to those contained in 19-9-103 and 19-9-106 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

PART 11

TEEN COURTS

19-2-1101. Short title. This part 11 shall be known and may be cited as the "Colorado Teen Court Program".

Source: L. 97: Entire part added, p. 1595, § 1, effective August 6.

19-2-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Minor offense" means any offense denominated a misdemeanor in title 18, C.R.S., or violation of a municipal ordinance where the maximum penalty authorized does not exceed imprisonment for more than six months.

(2) "Supervising court" means the juvenile court for the city and county of Denver, the district courts of the state other than that of Denver, and any municipal court that establishes a teen court program pursuant to this part 11.

(3) "Teen" means any person over the age of twelve years and under the age of nineteen years who is enrolled in school.

(4) "Teen court judge" means a volunteer, licensed to practice law in the state of Colorado, approved by and serving at the pleasure of the chief judge of the supervising court.

(5) "Teen defendant" means a teen ordered to participate in a teen court program under this part 11.

(6) "Teen defense attorney" means a teen who is chosen by a teen court judge to speak on behalf of a teen defendant.

(7) "Teen jury" means not less than three teens who have been chosen by a teen court judge to decide what sentence should be imposed against a teen defendant.

(8) "Teen prosecutor" means a teen who has been chosen by a teen court judge to advocate on behalf of a school or community for any sentence to be imposed.

Source: L. 97: Entire part added, p. 1595, § 1, effective August 6.

19-2-1103. Teen court program - supervising courts. (1) Any supervising court is authorized to establish a teen court program pursuant to the provisions of this part 11. In any jurisdiction where a teen court program is established, a teen charged with a minor offense may receive a deferred judgment, a condition of which is successful participation in the teen court program.

(2) The procedure for determining the eligibility for and imposition of the deferred judgment shall be as follows:

(a) The teen, in the presence of at least one of his or her parents or legal guardian, must enter a plea of guilty to the minor offense charged.

(b) The teen must request to participate in the teen court program, agree to the deferral of further proceedings in the supervising court for a period of six months or until the teen

has successfully completed the teen court program, and provide the court with addresses for mailing notices to both the teen and his or her parent or legal guardian.

(c) The supervising court must find that the teen will benefit more from participation in the teen court program than from any other sentence that may be imposed.

(d) The supervising court may accept the teen's plea, order that the teen participate in the teen court program, and defer further proceedings in the supervising court for up to six months.

(e) In addition to ordering the teen to participate in the teen court program, the supervising court may enter an order that the teen pay any restitution otherwise authorized by law.

(3) If the supervising court receives a report from the teen court judge that the teen has not successfully completed the teen court program, or if within six months after the entry of the order for deferred judgment the supervising court has not received a report that the teen has successfully completed the teen court program, the court shall schedule a sentencing hearing, send notice to the teen and his or her parent or legal guardian at the addresses given at the time of the order for deferred judgment or any changed address, and at the sentencing hearing impose any other sentence authorized for the offense charged.

(4) If the supervising court receives a report from the teen court judge that the teen has successfully completed the teen court program, the court shall dismiss all charges against the teen. The dismissal shall not constitute a conviction for any purpose.

Source: L. 97: Entire part added, p. 1596, § 1, effective August 6.

19-2-1104. Procedures - hearings. (1) Subject to any applicable rules of the Colorado supreme court, the supervising court shall be responsible for establishing procedures for any teen court program under its jurisdiction, including but not limited to:

(a) The use of its courtroom and other facilities during times when they are not required for other court business;

(b) The approval of teen court judges;

(c) The collection of a fee from any teen defendant;

(d) The range of sentencing options that may be imposed upon a teen defendant that shall not include a term of imprisonment nor the payment of restitution but may include:

(I) Community service supervised by the supervising court;

(II) Participation in law-related education classes, counseling, treatment, or other programs; or

(III) Participation as a juror or other teen court member in proceedings involving teen defendants.

(2) Whenever a teen, as a condition of a deferred judgment, has been ordered to participate in a teen court program, the teen and his or her parent or legal guardian shall be ordered to appear at a teen court sentencing hearing. The teen court judge shall preside over the sentencing hearing. The teen defendant may represent himself or herself or be represented by a teen defense attorney. The following procedures shall be followed at the teen court sentencing hearing:

(a) The teen court judge shall select a teen jury.

(b) The teen prosecutor and either the teen defendant or teen defense attorney may question the jury on their knowledge of the defendant or the facts of the offense for which the teen defendant was charged.

(c) The teen court judge may order that a teen juror be replaced if the judge finds that the juror may be biased.

(d) The teen prosecutor and either the teen defendant or teen defense attorney may make an opening statement.

(e) The teen defendant shall be subject to cross examination by the teen prosecutor concerning the circumstances or facts surrounding the offense or the character of the teen defendant and may either make a statement or be subject to direct examination by the teen defense attorney.

(f) Each side may offer witnesses and documents concerning the circumstances or facts surrounding the offense or the character of the teen defendant.

(g) The teen prosecutor and either the teen defendant or teen defense attorney may make a closing statement.

(h) Unless otherwise ordered by the teen court judge, the teen jury shall deliberate in private and shall unanimously agree upon the sentence to be imposed against the teen defendant, pursuant to guidelines adopted by the court.

(i) If the jury is unable to unanimously agree on a sentence, then the teen court judge shall impose the sentence, pursuant to guidelines adopted by the court.

(3) The teen court judge shall enter a written order that:

(a) Orders the teen defendant to complete the sentence imposed by the teen jury;

(b) Orders the teen defendant to submit a written report to the teen court judge within three months after the sentencing hearing showing satisfactory completion of the terms of the sentence; and

(c) Notifies the teen defendant that if the teen court judge does not receive the written report within the time required, the teen court judge shall file with the supervising court a report stating that the teen defendant has not satisfactorily completed the teen court program.

(4) Within six months after the order for deferred judgment, the teen court judge shall file a written report with the supervising court notifying the court whether the teen defendant has satisfactorily completed the teen court program.

Source: L. 97: Entire part added, p. 1597, § 1, effective August 6.

19-2-1105. Alternative procedures. Nothing contained in this part 11 shall be deemed to impair the authority of courts to adopt different or alternative procedures for the establishment and operation of teen court programs within their respective jurisdictions.

Source: L. 97: Entire part added, p. 1599, § 1, effective August 6.

PART 12

DETENTION BED MANAGEMENT

19-2-1201. Juvenile detention bed cap. (1) For the fiscal year 2003-04 through fiscal year 2010-11, the number of available juvenile detention beds statewide shall be limited to four hundred seventy-nine.

(2) For the fiscal year 2011-12 and each fiscal year thereafter, the number of available juvenile detention beds statewide shall be limited to four hundred twenty-two.

Source: L. 2003: Entire part added, p. 1522, § 1, effective May 1. **L. 2011:** Entire section amended, (SB 11-217), ch. 150, p. 523, § 1, effective May 5.

19-2-1202. Working group - allocation of beds. (1) The executive director of the department of human services and the state court administrator in the judicial department, or a designee of such persons, in consultation with the division of criminal justice of the department of public safety, the office of state planning and budgeting, the Colorado district attorneys council, and law enforcement representatives shall form a working group which shall carry out the following duties:

(a) The working group established pursuant to this subsection (1) shall annually allocate the number of juvenile detention beds to each catchment area in the state created pursuant to section 19-2-402.5, based on the number of juvenile beds established pursuant to section 19-2-1201. Once the allocation of juvenile detention beds is made to the catchment areas, the working group shall allocate detention beds within the catchment areas to the judicial districts within each catchment area. Judicial districts shall not exceed the number of beds allocated to them except for circumstances provided for in paragraph (b) of this subsection (1).

(b) The working group shall develop a mechanism for judicial districts within the same catchment area to loan detention beds to other judicial districts within the catchment area in cases of need.

(c) The working group shall develop emergency release guidelines that shall be used by each judicial district to prevent placement of a juvenile in a juvenile detention facility in excess of the number of beds allocated to the judicial district.

(d) The working group shall develop juvenile detention placement guidelines for each judicial district to use in complying with the number of juvenile detention beds allocated to the judicial district.

Source: L. 2003: Entire part added, p. 1522, § 1, effective May 1.

19-2-1203. Judicial districts - plans for the cap. Each judicial district shall annually develop a plan to manage the limit on the number of juvenile detention beds allocated to the judicial district by the working group pursuant to section 19-2-1202 (1) (a). The judicial district shall consider the emergency release guidelines and placement guidelines developed pursuant to section 19-2-1202 in its annual plan to manage the limit. The annual plan developed by the judicial district shall ensure the judicial district does not exceed the number of juvenile detention beds allocated to it pursuant to section 19-2-1202.

Source: L. 2003: Entire part added, p. 1523, § 1, effective May 1.

19-2-1204. Use of juvenile detention beds. A juvenile committed to the department of human services pursuant to article 3 of this title shall not be placed in a juvenile detention bed unless the juvenile is subject to an action proceeding under this article.

Source: L. 2003: Entire part added, p. 1523, § 1, effective May 1.

PART 13

COMPETENCY TO PROCEED

19-2-1301. Mental incompetency to proceed - effect - how and when raised. (1) The provisions of this part 13 shall only apply to proceedings under this title.

(2) A juvenile shall not be tried or sentenced if the juvenile is incompetent to proceed, as defined in section 16-8.5-101 (11), C.R.S., at that stage of the proceedings against him or her.

(3) When a party specified in this subsection (3) has reason to believe that a juvenile is incompetent to proceed in a delinquency action, the party shall raise the question of the juvenile's competency in the following manner:

(a) On its own motion, the court shall suspend the proceeding and determine the competency or incompetency of the juvenile as provided in section 19-2-1302.

(b) By motion of the prosecution, probation officer, guardian ad litem, or defense, made in advance of the commencement of the particular proceeding. The motion may be filed after the commencement of the proceeding if, for good cause shown, the mental condition of the juvenile was not known or apparent before the commencement of the proceeding.

(c) By the juvenile's parent or legal guardian.

(4) If the issue of competency is raised at the time charges are filed or at any time thereafter and the juvenile is not represented by counsel, the court may immediately appoint counsel and may also appoint a guardian ad litem to assure the best interests of the juvenile are addressed in accordance with existing law.

Source: L. 2005: Entire part added, p. 1050, § 1, effective July 1. **L. 2008:** (2) amended, p. 1859, § 15, effective July 1. **L. 2009:** (2) amended, (SB 09-292), ch. 369, p. 1950, § 37, effective August 5.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (2), see section 1 of chapter 389, Session Laws of Colorado 2008.

19-2-1302. Determination of incompetency to proceed. (1) Whenever the question of a juvenile's competency to proceed is raised, the court shall make a preliminary finding that the juvenile is or is not competent to proceed. If the court feels that the information available to it is inadequate for making such a finding, it shall order a competency examination.

(2) The court shall immediately notify the prosecuting attorney and defense counsel of the preliminary finding regarding competency. The prosecuting attorney or the defense counsel may request a hearing on the preliminary finding by filing a written request with the court within ten days after the date on which the court issues the preliminary finding, unless the court extends the time period for good cause. The preliminary finding becomes a final determination if neither the prosecuting attorney nor defense counsel requests a hearing. Upon the timely written request of either the prosecuting attorney or defense counsel, the court shall hold a competency hearing. If the court did not order a competency examination or other evaluation prior to its preliminary determination and the court determines adequate mental health information is not available, the court shall refer the juvenile for a competency examination prior to the hearing. At the conclusion of the competency hearing, the court shall make a final determination regarding the juvenile's competency to proceed. At a competency hearing held pursuant to this subsection (2), the burden of submitting evidence and the burden of proof by a preponderance of the evidence are upon the party asserting the incompetency of the juvenile.

(3) If the question of a juvenile's incompetency to proceed is raised after a jury is impaneled to try the issues raised by a plea of not guilty or after the court as the finder of fact begins to hear evidence and the court determines that the juvenile is incompetent to proceed or orders the juvenile referred for a competency examination, the court may declare a mistrial. If the court declares a mistrial under these circumstances, the juvenile shall not be deemed to have been placed in jeopardy with regard to the charges at issue. The juvenile may be tried on, and sentenced if adjudicated for, the same charges after he or she has been found to be restored to competency.

(4) (a) If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile.

(b) A competency evaluation shall be conducted by a licensed psychiatrist or licensed psychologist who is experienced in the clinical evaluation of juveniles and trained in forensic competency assessments, or a psychiatrist or psychologist who is in forensic training and under the supervision of a licensed forensic psychiatrist or licensed psychologist with expertise in forensic psychology.

(c) The competency evaluation shall, at a minimum, include an opinion regarding whether the juvenile is competent to proceed as defined in section 16-8.5-101 (4), C.R.S. If the evaluation concludes the juvenile is incompetent to proceed, the evaluation shall include a recommendation as to whether the juvenile may be restored to competency and identify appropriate services to restore the juvenile to competency.

(d) The evaluator conducting the competency evaluation shall file the evaluation with the court within:

(I) Thirty days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is held in a secure detention facility;

(II) Forty-five days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is not held in a secure detention facility.

Source: L. 2005: Entire part added, p. 1051, § 1, effective July 1. **L. 2008:** (4)(c) amended, p. 1859, § 16, effective July 1. **L. 2009:** (4)(c) amended, (SB 09-292), ch. 369, p. 1950, § 38, effective August 5.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (4)(c), see section 1 of chapter 389, Session Laws of Colorado 2008.

19-2-1303. Procedure after determination of competency or incompetency. (1) If the court finally determines pursuant to section 19-2-1302 that the juvenile is competent to proceed, the court shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

(2) If the court finally determines pursuant to section 19-2-1302 that the juvenile is incompetent to proceed, but may be restored to competency, the court shall stay the proceedings and order that the juvenile receive services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation unless the court makes specific findings that the recommended services in the competency evaluation are not justified. The court shall order that the restoration services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile. The court shall review the juvenile's progress toward competency at least every ninety days until competency is restored. The court shall not maintain jurisdiction longer than the maximum possible sentence for the original offense, unless the court makes specific findings of good cause to retain jurisdiction. However, in no case shall the juvenile court's jurisdiction extend beyond the juvenile's twenty-first birthday.

(3) (a) If the court finally determines that the juvenile is incompetent to proceed and cannot be restored to competency, the court shall determine whether a management plan for the juvenile is necessary, taking into account the public safety and the best interests of the juvenile. If the court determines a management plan is necessary, the court shall develop the management plan after ordering that the juvenile be placed in the least-restrictive environment, taking into account the public safety and best interests of the juvenile. If the court determines a management plan is unnecessary, the court may continue any treatment or plan already in place for the juvenile. The management plan shall, at a minimum, address treatment for the juvenile, identify the party or parties responsible for the juvenile, and specify appropriate behavior management tools, if they are not otherwise part of the juvenile's treatment.

(b) The management plan may include:

(I) Placement options included in article 10 or 10.5 of title 27, C.R.S.;

(II) A treatment plan developed by a licensed mental health professional;

(III) An informed supervision model;

(IV) Institution of a guardianship petition; or

(V) Any other remedy deemed appropriate by the court.

(c) If the charges are not dismissed earlier by the district attorney, the charges against a juvenile found to be incompetent and unrestorable shall be dismissed no later than the maximum possible sentence for the original offense after the date of the court's finding of incompetent and unrestorable, unless the court makes specific findings of good cause to retain jurisdiction. However, in no case shall the juvenile court's jurisdiction extend beyond the juvenile's twenty-first birthday.

(4) A determination under subsection (2) of this section that a juvenile is incompetent to proceed shall not preclude the court from considering the release of the juvenile on bail upon compliance with the standards and procedures for such release prescribed by statute. At any hearing to determine eligibility for release on bail, the court may consider any effect the juvenile's incompetency may have on the juvenile's ability to insure his or her presence for trial.

Source: L. 2005: Entire part added, p. 1052, § 1, effective July 1.

19-2-1304. Restoration to competency. (1) The court may order a restoration hearing, as defined in section 16-8.5-101 (13), C.R.S., at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a hearing if a mental health professional who has been treating the juvenile files a report certifying that the juvenile is mentally competent to proceed.

(2) At the hearing, if the question is contested, the burden of submitting evidence and the burden of proof by a preponderance of the evidence shall be upon the party asserting that the juvenile is competent.

(3) At the hearing, the court shall determine whether the juvenile is restored to competency.

Source: L. 2005: Entire part added, p. 1053, § 1, effective July 1. **L. 2008:** (1) amended, p. 1859, § 17, effective July 1. **L. 2009:** (1) amended, (SB 09-292), ch. 369, p. 1950, § 39, effective August 5.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1), see section 1 of chapter 389, Session Laws of Colorado 2008.

19-2-1305. Procedure after hearing concerning restoration to competency. (1) If a juvenile is found to be restored to competency after a hearing, as provided in section 19-2-1304, or by the court during a review, as provided in section 19-2-1303 (2), the court shall resume or recommence the trial or sentencing proceeding or order the sentence carried out. The court may credit any time the juvenile spent in confinement or detention while incompetent against any term of commitment imposed after restoration to competency.

(2) If the court determines that the juvenile remains mentally incompetent to proceed and the delinquency petition is not dismissed, the court may continue or modify any orders entered at the time of the original determination of incompetency or enter any new order necessary to facilitate the juvenile's restoration to mental competency.

(3) Evidence obtained during a competency evaluation or during treatment related to the juvenile's competency or incompetency and the determination as to the juvenile's competency or incompetency are not admissible on the issues raised by a plea of not guilty.

Source: L. 2005: Entire part added, p. 1054, § 1, effective July 1.

ARTICLE 3

Dependency and Neglect

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Law reviews: For comment, "The Indian Child Welfare Act of 1978: Protecting Essential Tribal Interests", see 60 U. Colo. L. Rev. 131 (1989); for article, "Representing Foster Parents in Dependency and Neglect Proceedings", see 22 Colo. Law. 1697 (1993); for article, "Dependency and Neglect Law: New Legislation and Case Law", see 35 Colo. Law. 79 (September 2006).

PART 1

DEFINITIONS

19-3-100.5. Legislative declaration.
19-3-101. Definitions. (Repealed)
19-3-102. Neglected or dependent child.
19-3-103. Child not neglected - when.
19-3-104. Hearings - procedure.

PART 2

GENERAL PROVISIONS

19-3-201. Venue.
19-3-201.5. Change of venue - county department and county attorney responsibilities - rules.
19-3-202. Right to counsel and jury trial.
19-3-203. Guardian ad litem.
19-3-204. Temporary protective custody. (Repealed)
19-3-205. Continuing jurisdiction.
19-3-206. Representation of petitioner.
19-3-207. Inadmissibility of certain evidence.
19-3-208. Services - county required to provide - rules.
19-3-208.5. Pilot program - legislative declaration - child welfare - mental health services - rules - repeal.
19-3-209. Individual case plan - required.
19-3-210. Foster parents' bill of rights study - task force created - principles to be examined - report. (Repealed)
19-3-211. Conflict resolution process - rules - definitions.
19-3-212. Notice of rights and remedies for families.
19-3-213. Placement criteria.
19-3-214. Placement reporting.

19-3-215. Foster care - capacity may be exceeded for sibling groups.

PART 3

CHILD ABUSE OR NEGLECT

19-3-301. Short title.
19-3-302. Legislative declaration.
19-3-303. Definitions. (Repealed)
19-3-304. Persons required to report child abuse or neglect.
19-3-304.5. Emergency possession of certain abandoned children.
19-3-305. Required report of postmortem investigation.
19-3-306. Evidence of abuse - color photographs and X rays.
19-3-307. Reporting procedures.
19-3-308. Action upon report of intrafamilial, institutional, or third-party abuse - investigations - child protection team - rules - repeal.
19-3-308.3. Differential response pilot program for child abuse or neglect cases of low or moderate risk - rules - reports - evaluation - repeal.
19-3-308.5. Recorded interviews of child.
19-3-309. Immunity from liability - persons reporting.
19-3-309.5. Preconfirmation safety plan agreement - first-time minor incidents of child abuse or neglect - rules.
19-3-310. Child abuse and child neglect diversion program.
19-3-310.5. Mediation - pilot program. (Repealed)
19-3-311. Evidence not privileged.
19-3-312. Court proceedings.
19-3-313. Central registry. (Repealed)
19-3-313.5. State department duties - reports of child abuse or neglect - training of county departments - rules - notice and appeal process - confidentiality.
19-3-314. Confidentiality of records. (Repealed)
19-3-315. Federal funds.
19-3-316. Protection orders and emergency protection orders. (Repealed)

PART 4

TEMPORARY CUSTODY AND SHELTER

19-3-401. Taking children into custody.
19-3-402. Duty of officer - notification - release or detention.
19-3-403. Temporary custody - hearing - time limits - restriction - rules.
19-3-404. Temporary shelter - child's home.
19-3-405. Temporary protective custody.
19-3-406. Fingerprint-based criminal history records check - providers of emergency placement for children - use of criminal justice records.

PART 5

PETITION, ADJUDICATION, DISPOSITION

19-3-500.2. Legislative declaration.
19-3-501. Petition initiation - preliminary investigation - informal adjustment.
19-3-502. Petition form and content - limitations on claims in dependency or neglect actions.
19-3-503. Summons - issuance - contents - service.
19-3-504. Contempt - warrant.
19-3-505. Adjudicatory hearing - findings - adjudication.
19-3-506. Child with a mental illness or developmental disability - procedure.
19-3-507. Dispositional hearing.
19-3-508. Neglected or dependent child - disposition - concurrent planning.

PART 6

TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP

19-3-601. Short title.
19-3-602. Motion for termination - separate hearing - right to counsel - no jury trial.
19-3-603. Notice - abandonment.
19-3-604. Criteria for termination.
19-3-605. Request for placement with family members.
19-3-606. Review of child's disposition following termination of the parent-child legal relationship.
19-3-607. Expert testimony.
19-3-608. Effect of decree.
19-3-609. Appeals.
19-3-610. Budgetary allocation for expenses.
19-3-611. Review of decisions regarding placement of children. (Repealed)

PART 7

REVIEW OF PLACEMENT

19-3-701. Petition for review of need for placement. (Repealed)

19-3-702. Permanency hearing - periodic review.

19-3-703. Permanent home.

PART 1

DEFINITIONS

19-3-100.5. Legislative declaration. (1) The general assembly hereby finds and declares that the stability and preservation of the families of this state and the safety and protection of children are matters of statewide concern. The general assembly finds that the federal "Adoption Assistance and Child Welfare Act of 1980", federal Public Law 96-272, requires that each state make a commitment to make "reasonable efforts" to prevent the placement of abused and neglected children out of the home and to reunify the family whenever appropriate.

(2) The general assembly further finds that the federal "Adoption and Safe Families Act of 1997", federal Public Law 105-89, clarifies what constitutes "reasonable efforts" by decreeing that when deciding whether to make such efforts and in the process of making such efforts, the health and safety of the child is the paramount concern. This federal law further encourages expediting permanency planning for children in out-of-home placement by removing barriers to permanency and streamlining entitlement services. The law specifies that one of the goals of all placement decisions, whether leaving the child in the home or placing the child outside the home, is safety for the child.

(3) The general assembly further finds that the implementation of the federal "Adoption Assistance and Child Welfare Act of 1980", federal Public Law 96-272, is not the exclusive responsibility of the state department of social services or of local departments of social services. Elected officials at the state and local levels must ensure that resources and services are available through state and local social services agencies and through the involvement of the resources of public and private sources. Judges, attorneys, and guardians ad litem must be encouraged to take independent responsibility to ensure that "reasonable efforts" to prevent out-of-home placements have been made only when appropriate, that permanency occurs for children in foster care, and that safe child placements occur in each case.

(4) Therefore, in order to carry out the requirements addressed in this section, and to decrease the need for out-of-home placement, the general assembly shall define "reasonable efforts" and identify the services and processes that must be in place to ensure that "reasonable efforts" have been made. The general assembly shall provide that "reasonable efforts" are deemed to be met when a county or city and county provides services in accordance with section 19-3-208.

Source: L. 93: Entire section added, p. 2012, § 1, effective July 1. **L. 94:** Entire section amended, p. 1053, § 2, effective May 4. **L. 98:** Entire section amended, p. 1416, § 1, effective July 1.

ANNOTATION

Questions concerning a child's health and safety are purview of trial court, which retains ultimate decision-making authority in the case. The trial court itself must make decisions regarding visitation and may not delegate this function to third parties. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

19-3-101. Definitions. (Repealed)

Source: L. 87: Entire title R&RE, p. 759, § 1, effective October 1. **L. 93:** Entire section and (1) amended, pp. 2013, 582, §§ 2, 19, effective July 1. **L. 94:** (1) amended, p. 1084, § 3, effective May 4. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-3-102. Neglected or dependent child. (1) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(c) The child's environment is injurious to his or her welfare;

(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;

(e) The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;

(f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;

(g) The child tests positive at birth for either a schedule I controlled substance, as defined in section 18-18-203, C.R.S., or a schedule II controlled substance, as defined in section 18-18-204, C.R.S., unless the child tests positive for a schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed.

(2) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse; and

(b) Such parent, guardian, or legal custodian has been the respondent in another proceeding under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent's, guardian's, or legal custodian's abuse or neglect has caused the death of another child; and

(c) The pattern of habitual abuse described in paragraph (a) of this subsection (2) and the type of abuse described in the allegations specified in paragraph (b) of this subsection (2) pose a current threat to the child.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 97:** Entire section amended, p. 516, § 2, effective July 1; entire section amended, p. 1433, § 8, effective July 1. **L. 2005:** (1)(g) added, p. 587, § 2, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

ANNOTATION

Law reviews. For article, "Review of Colorado Dependency and Neglect Law", see 11 Colo. Law. 3007 (1982).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Former subsection (1)(c) (formerly § 19-1-403 (20)(c)). Subsection (1)(c) is not unconstitutionally vague and overbroad. People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (1980).

Public policy of state is to provide for neglected and dependent child in a manner that will best serve his or her welfare and the interests of society. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

The juvenile court does not have jurisdiction over an unborn child in a dependency and neglect action. The Colorado Children's Code defines a "child" as a person under 18 years of age. When the general assembly amended the definition of child in 1967 and removed the reference to an unborn child, the intent was to change the law and no longer subject an unborn child to the provisions of the Children's Code. Additionally, the remedies that are available in dependency and neglect actions support the conclusion that an unborn child is not subject to the Children's Code. The provisions and remedies in the dependency and neglect statutes all relate to a child who has been born. People ex rel. H., 74 P.3d 494 (Colo. App. 2003).

People ex rel. H., cited above, does not preclude the filing of a petition as to a child born with controlled substances in his or her system. Evidence of a parent's prenatal substance abuse is sufficient to establish there will be mistreatment or abuse if the child is placed with the parent after birth. Upon the birth of the child, such evidence may also support the filing of a petition in dependency or neglect under subsection (1)(a) to (1)(c). People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

In order to declare child neglected or dependent as a preliminary to separating him or her from his or her parents or custodians, the evidence must clearly establish its necessity, and state intervention should be limited to instances of neglect and dependency as defined in the Colorado Children's Code. People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979).

Adjudications of neglect or dependency are not made "as to" the parents, but rather relate only to the status of the child. People in Interest of P.D.S., 669 P.2d 627 (Colo. App. 1983); People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

Specific findings required. Vague references to a child's best interests cannot be substituted for the specific findings required by the Colorado Children's Code. C.M. v. People in Interest of J.M., 198 Colo. 436, 601 P.2d 1364 (1979).

In order to declare a child neglected and dependent, a step ordinarily followed by a disposition proceeding separating him or her from his or her parents or custodians, the evidence must clearly establish that such separation is necessary. State intervention should be limited to the instances of neglect and dependency defined in this section. C.M. v. People in Interest of J.M., 198 Colo. 436, 601 P.2d 1364 (1979).

There is no single adamantine signification in the expressions "dependent child" and "neglected child", but the court must naturally look to the general assembly for the meaning intended to be attached to these words. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

There is no distinction between findings of dependency and neglect. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

Terms "neglected" or "dependent" are used interchangeably in former subsection (20) (now subsection (1)) and by setting these out in the alternative the general assembly intended that "neglected or dependent child" or "dependent or neglected child" would stand for a single concept. People in Interest of D.L.E., 200 Colo. 244, 614 P.2d 873 (1980).

The dependency provisions make no distinction between illegitimate and legitimate dependent children. The terminology thereof, namely "child", clearly negates such a construction. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

Former § 19-1-114 (now § 19-3-103) can bar finding of neglect or dependency under subsection (1) of this section. People in Interest of D.L.E., 200 Colo. 244, 614 P.2d 873 (1980).

The addition of subsection (1)(g) clarified, but did not change, existing law. Subsection (1)(g) was intended to expedite dependency and neglect proceedings, and subsection (1)(g) can be applied to a petition filed as to a child born with controlled substances in his or her system. People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

A child whose parents have abandoned it is a dependent or neglected child. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

As is child subjected to mistreatment. In an action to declare children dependent or neglected, the state must show that the parents subjected, or allowed another to subject, the child to mistreatment or abuse. In re People in Interest of R.K., 31 Colo. App. 459, 505 P.2d 37 (1972).

Where welfare and needs are in peril. Under these provisions of the Colorado Children's Code concerning the determination of neglect and dependency, such determination can be sought only in situations where the immediate needs and welfare of a child are in peril, and consequently they represent situations where the doctrine of parens patriae would be applicable. In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Child not neglected because condition would improve with change of parents. While the state has a legitimate concern in furthering the best interests of the child, a child cannot be deemed "neglected" merely because it is contended that his condition would be improved by changing his parents or custodians. People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979).

Abandonment is primarily a question of intent. It is more often determined by what one does rather than by what he says. Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954).

Injurious environment allegations against father based solely on mother's conduct were erroneous. Court unwilling to read into subsection (1)(c) a provision allowing for a no-fault adjudication where the dependency and neglect petition is based on allegations of an injurious environment given that the general assembly expressly provided for no-fault adjudication in subsection (1)(e) concerning homelessness and lack of proper care. People ex rel. S.G.L., 214 P.3d 580 (Colo. App. 2009).

Abandoned child receiving care from others may be declared dependent and neglected. When a child has been abandoned by its parents, a court may find that the child is dependent and neglected, notwithstanding the fact that the child may be currently receiving adequate care from other persons. People in Interest of F.M., 44 Colo. App. 142, 609 P.2d 1123 (1980).

No religious freedom right to expose child to ill health. The right to practice religion freely does not include the right or liberty to expose the community or the child to ill health or death. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

And allowing conventional medical treatment not unconstitutional. An interpretation of this section to allow conventional medical treatment does not violate the free exercise of religion clauses of the first amendment of the United States constitution and of § 4 of art. II, Colo. Const. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

Child neglected if deprived of care necessary to prevent life-endangering condition. A child who is treated solely by spiritual means is not, for that reason alone, dependent or neglected, but if there is an additional reason, such as where the child is deprived of medical care necessary to prevent a life-endangering condition, the child may be adjudicated dependent and neglected under the statutory scheme. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

At least where a minor suffers from a life-threatening medical condition due to a failure to comply with a program of medical treatment on religious grounds, this section permits a finding of dependency and neglect. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

"For that reason alone" construed. The statutory language, "for that reason alone", allows a finding of dependency and neglect for other "reasons", such as where the child's life is in imminent danger, despite any treatment by spiritual means. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

A child may be neglected or dependent because she lacks proper care through no fault of the parents. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Summary judgment in favor of defendant pursuant to subsection (1)(f) and against mother of 9-year-old child was not appropriate. Even though child had once refused to go home, there was no evidence that child had run away from home, and child's statement that she would consider living part-time with each parent sufficiently raised a genuine issue as to whether child was beyond the control of her mother. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Summary judgment was also inappropriate under subsections (1)(b) to (1)(d) where other than child's claim of abuse, there was no evidence of abuse under § 19-3-505 (7)(a) which might have occurred while the child, who also spent time with noncustodial father, was in the mother's custody. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Further, even if court were to characterize the enlarged vaginal opening as evidence of abuse pursuant to § 19-3-505 (7)(a), it would establish only prima facie, not conclusive, evidence that child was neglected or dependent under this section. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Jury instructions concerning dependency and neglect adjudication were not misleading where instructions were stated in the past tense rather than the present tense. People ex rel. S.X.M., __ P.3d __ (Colo. App. 2011).

19-3-103. Child not neglected - when. (1) No child who in lieu of medical treatment is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent within the purview of this article. However, the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability. In order to make a determination as to whether the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104 (3), order a medical evaluation of the child. If the court determines, on the basis of any relevant evidence before the court, including the medical evaluation ordered pursuant to this section, that the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104 (3), order that medical treatment be provided for the child. A child whose parent, guardian, or legal

custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to have been neglected or dependent for the purposes of this article and injured or endangered for the purposes of section 18-6-401, C.R.S.

(2) A method of religious healing shall be presumed to be a recognized method of religious healing if:

(a) (I) Fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as medical expenses pursuant to regulations or rules promulgated by the United States internal revenue service; and

(II) Fees and expenses incurred in connection with such treatment are generally recognized as reimbursable health care expenses under medical policies of insurance issued by insurers licensed by this state; or

(b) Such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 89:** Entire section amended, p. 924, § 1, effective June 7. **L. 92:** Entire section amended, p. 174, § 2, effective April 16. **L. 93:** (1) amended, p. 1637, § 23, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

This section does not provide an absolute defense to charges of child abuse pursuant to § 18-6-401. Treatment by spiritual means was not a defense where parents failed to obtain medical care necessary to treat a child's life-threatening condition. People v. Lybarger, 790 P.2d 855 (Colo. App. 1989).

19-3-104. Hearings - procedure. Except for proceedings held pursuant to section 19-3-703, any hearing conducted pursuant to this article in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2) shall not be delayed or continued unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay or continuance. Whenever any such delay or continuance is granted, the court shall set forth the specific reasons necessitating the delay or continuance and shall schedule the matter within thirty days after the date of granting the delay or continuance. If appropriate, in any hearing conducted pursuant to this article in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall include all other children residing in the same household whose placement is subject to determination pursuant to this article.

Source: L. 94: Entire section added, p. 2053, § 4, effective July 1.

ANNOTATION

When basis for delay is apparent from the record and parents did not object, trial court's failure to make express findings that there was good cause for delay not error. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007); People ex rel. D.M., 186 P.3d 101 (Colo. App. 2008).

The statutory time in which to conduct a termination hearing is not jurisdictional; therefore, parents' failure to raise the issue in the trial court precludes relief on appeal. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007).

PART 2

GENERAL PROVISIONS

19-3-201. Venue. (1) All proceedings brought under this article shall be commenced in the county in which the child resides or is present.

(2) When proceedings are commenced under this article in a county other than that of the child's residence, the court in which proceedings were initiated may, on its own motion or on the motion of any interested party, transfer the case to the court in the county where the child resides under the following circumstances:

(a) The transfer would not be detrimental to the best interests of the child; and

(b) Adjudication has taken place or the case has been continued pursuant to section 19-3-505 (5).

(3) In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), it shall be presumed that any transfer of proceedings pursuant to subsection (2) of this section without good cause shown that results in a delay in the judicial proceedings would be detrimental to the child's best interests. Such presumption may be rebutted by a preponderance of the evidence.

(4) (a) An order granting a change of venue and transferring jurisdiction to the court in the county in which the child resides shall be effective fifteen days after the transferring court signs the order. Within thirty days after signing the order, the transferring court shall forward the court file, including originals or certified copies of all documents and reports, to the receiving court.

(b) The order granting a change of venue and transferring jurisdiction shall include:

(I) Notice to the receiving court of whether a respondent parent's counsel and the guardian ad litem appointed for the child will remain on the case. If a respondent parent's counsel or the guardian ad litem for the child will not remain on the case, the order shall inform the receiving court that the receiving court shall make a new appointment of counsel or guardian ad litem.

(II) Notice that the transferring court shall vacate any existing hearing date after the effective date of the order.

(5) When venue is transferred, as set forth in subsection (2) of this section, the receiving court shall proceed with the case as if the petition had been originally filed or adjudication had been originally made in that court. The receiving court shall hold an initial hearing in the case within thirty days after the effective date of the order granting a change of venue and transferring jurisdiction to the receiving court.

(6) A motion for change of venue shall be made in writing and shall include a certification by the moving party that the moving party has complied with all statutory requirements. The motion for change of venue shall be mailed to all parties and attorneys of record in the case and to the county attorney in the receiving county.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 94:** (2) amended, p. 2053, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1359), ch. 223, p. 968, § 1, effective September 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This statute requires that actions be filed in either the county of the child's residence or in the county where the child is present. In the absence of a waiver by the parties, the trial court did not have discretion to maintain the case in another county. People in Interest of T.L.D., 809 P.2d 1120 (Colo. App. 1991).

Venue proper despite technical legal residence elsewhere. When the proper officer files a petition in dependency in the county where the child is found and the conditions alleged as constituting dependency also exist therein, the venue of a dependency action is in that county despite technical legal residence elsewhere. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947).

19-3-201.5. Change of venue - county department and county attorney responsibilities - rules. (1) Each county department shall designate a change of venue coordinator to facilitate the transfer of jurisdiction of a case between county departments.

(2) Within fifteen days after a court signs an order pursuant to section 19-3-201 granting a change of venue and transferring jurisdiction, the transferring county department shall:

(a) Provide written case information to the designated change of venue coordinator in the receiving county, which information shall include, but need not be limited to, permanency goals, target dates relating to the case, evaluations, a current family services plan, court reports, dates of placement moves, the progress of the child in placement, all Title IV-E eligibility determinations pursuant to the federal "Social Security Act", as amended, and recommendations for continuing progress in the case;

(b) Update all documentation in the case file, including the record in the state automated system;

(c) Provide information concerning, to the extent known, the physical location of the child's parents, guardians, legal custodians, and relatives; and

(d) (I) Schedule a family engagement meeting involving all parties, county department caseworkers and supervisors, and community providers; or

(II) Conduct a case staffing between county caseworkers and supervisors in the transferring and receiving county departments; or

(III) Submit a written case transfer summary.

(3) Within fifteen days after a court signs an order pursuant to section 19-3-201 granting a change of venue and transferring jurisdiction, the transferring county attorney's office shall forward a complete copy of the case file, excluding any confidential attorney-client communications, to the county attorney's office in the receiving county.

(4) The state department shall promulgate, in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., any rules necessary for the effective transfer of case responsibilities between county departments resulting from a change of venue pursuant to section 19-3-201.

Source: L. 2010: Entire section added, (HB 10-1359), ch. 223, p. 969, § 2, effective September 1.

Cross references: For part E of Title IV of the federal "Social Security Act", see 42 U.S.C. sec. 70 et seq.

19-3-202. Right to counsel and jury trial. (1) At the first appearance of a respondent parent, guardian, or legal custodian, the court shall fully advise such party of his legal rights, including the right to a jury trial, the right to be represented by counsel at every stage of the proceedings, and the right to seek the appointment of counsel if the party is unable financially to secure counsel on his own. The court shall fully explain to such party the informational notice of rights and remedies for families prepared pursuant to section 19-3-212, and shall recommend that the party discuss such notice with counsel. Further, the court shall advise the party of the minimum and maximum time frames for the dependency and neglect process, including the minimum and maximum time frames for adjudication, disposition, and termination of parental rights for a child who is under six years of age at the time the petition is filed in a county designated pursuant to section 19-1-123.

(2) The petitioner, any respondent, or the guardian ad litem may demand a trial by jury of six persons at the adjudicatory hearing under section 19-3-505 or the court, on its own motion, may order such a jury to try any case at the adjudicatory hearing under section 19-3-505.

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 2003:** (1) amended, p. 1226, § 3, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Parent has a statutory right to counsel at a statutorily prescribed proceeding for review of out-of-home placements of children. People in Interest of J.B., 702 P.2d 753 (Colo. App. 1985).

Respondents in a proceeding to terminate parental rights, having made a prior demand, were entitled to a jury trial at the adjudicatory hearing on remand. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Indigent parent is not entitled to appointment of expert witness prior to dependency and neglect hearing. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987), cert. denied, 754 P.2d 1177 (Colo. 1988).

Parent was entitled to court-appointed counsel at the remand and appellate stages of the proceedings. Parent's right to counsel in dependency and neglect proceedings at the trial court level and on appeal are statutory in nature. Father timely requested counsel at both stages, and the court determined that father was indigent. Trial court erred in declining to appoint counsel. People ex rel. A.H., __ P.3d __ (Colo. App. 2011).

An appointed lawyer for an indigent parent during dependency and neglect proceedings cannot withdraw solely because the lawyer determines the appeal to be without merit. Rather the lawyer must nonetheless file petitions on appeal in accordance with appellate rules. A.L.L. v. People, 226 P.3d 1054 (Colo. 2010).

Failure to appoint counsel at initial detention hearing of dependency and neglect proceeding for mother who declined to invoke right to counsel at such hearing was not error requiring reversal of termination of parental rights. People in Interest of L.L., 715 P.2d 334 (Colo. 1986); People in Interest of V.W., 958 P.2d 1132 (Colo. App. 1998).

A person seeking court-appointed counsel bears the burden of establishing his or her indigency. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

The trial court abused its discretion when it failed to consider any factors other than whether a respondent was automatically eligible under the guidelines and made no findings of fact regarding the point at which the respondent's indigency status and eligibility changed. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

The court is required to consider the respondent's complete financial circumstances by allowing him an opportunity to establish that he lacks the necessary funds, on a practical basis, to retain competent counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Attorney acting as court-appointed counsel pursuant to a valid court order is not required to submit evidence of the client's indigency status with her motion for payment of attorney fees and costs as appointed counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

The trial court abused its discretion by redetermining respondent's eligibility for court appointed counsel and finding him retroactively ineligible. The court could not change respondent's status without allowing him an opportunity to produce evidence of his total financial circumstances including his practical ability to retain competent counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

In determining whether to authorize payment of a fee in excess of established maximum total fee, a judge should consider whether special circumstances required additional time be spent on the case, including but not limited to a consideration of whether the case required extensive legal research or factual investigation. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

An order for payment of fees in excess of the maximum must include a statement of reasons setting forth the specific special circumstances that justify the excess amount. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Until the client is found to be ineligible, a court-appointed attorney will be paid by the state and that the client will be required to reimburse the state if he subsequently is found to be ineligible for court-appointed counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

In general, a court-appointed attorney is to be awarded fees and costs at state expense for services rendered from the date of appointment to the date that the court enters an order finding the defendant to be ineligible. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

However, the trial court retains discretion

to determine that the state will pay attorney fees and costs only up to the time at which the client's indigency status changed if the court makes specific findings of fact regarding circumstances that justify such a disposition such as fraud or misrepresentation on the part of appointed counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

If the trial court determines that a person became ineligible at a previous date, the court shall order that the person reimburse the state in whole or in part for the expenses and costs it incurred on that person's behalf. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Costs may be awarded against the state where there is an express legislative provision for costs against the state or where the state is in the position of a party litigant against whom costs are otherwise legislatively authorized to be awarded. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Attorneys have standing to raise claims in the context of other proceedings, even though they are nonparties and other procedural avenues may be available to them to pursue their claims. People ex rel. J.L., 121 P.3d 315 (Colo. App. 2005).

Attorney, therefore, has standing to raise his or her claim that trial court erred by denying his or her motion to be relieved of appointment to represent mother. People ex rel. J.L., 121 P.3d 315 (Colo. App. 2005).

In general, attorney fees are not recoverable absent a specific contractual, statutory, or procedural rule providing otherwise. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

And, even when attorney fees are expressly authorized, the court has required some indication of legislative intent to allow such an award against the government. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

19-3-203. Guardian ad litem. (1) Upon the filing of a petition under section 19-3-502 that alleges abuse or neglect of a minor child, the court shall appoint a guardian ad litem. Nothing in this section shall limit the power of the court to appoint a guardian ad litem prior to the filing of a petition for good cause.

(2) The guardian ad litem shall be provided with all reports relevant to a case submitted to or made by any agency or person pursuant to this article, including reports of examination of the child or persons responsible for the neglect or dependency of the child. The court and social workers assigned to the case shall keep the guardian ad litem apprised of significant developments in the case, particularly prior to further neglect or dependency court appearances.

(3) The guardian ad litem shall be charged in general with the representation of the child's interests. To that end, the guardian ad litem shall make such further investigations as the guardian ad litem deems necessary to ascertain the facts and shall talk with or observe the child involved, examine and cross-examine witnesses in both the adjudicatory and dispositional hearings, introduce and examine the guardian ad litem's own witnesses, make recommendations to the court concerning the child's welfare, appeal matters to the court of appeals or the supreme court, and participate further in the proceedings to the degree necessary to adequately represent the child. In addition, the guardian ad litem, if in the best interest of the child, shall seek to assure that reasonable efforts are being made to prevent unnecessary placement of the child out of the home and to facilitate reunification of the child with the child's family or, if reunification is not possible, to find another safe and permanent living arrangement for the child. In determining whether said reasonable efforts are made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 92:** (1) amended, p. 224, § 9, effective July 1. **L. 93:** (3) amended, p. 2013, § 3, effective July 1. **L. 98:** (3) amended, p. 1417, § 3, effective July 1. **L. 2001:** (3) amended, p. 846, § 7, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 and 19-10-113 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3), see section 1 of chapter 241, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For Supreme Court directive, see "Colorado Supreme Court Issues a Directive on GALs in Cases Under CRS Title 19", 25 Colo. Law. 17 (March 1996). For article, "The Role of Guardian ad Litem: Changes in the Wind", see 27 Colo. Law. 73 (November 1998). For article, "Ethical Issues for Guardians ad Litem Representing Children in Dependency and Neglect Cases", see 31 Colo. Law. 43 (October 2002). For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (October 2002).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The state is the exclusive party to file a petition in dependency and neglect and a guardian ad litem has no authority to assume the role of the state. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

However, the trial court is not required to dismiss a dependency and neglect petition merely because the state chooses, for any reason, not to pursue the proceedings. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

Dependency and neglect petition may not be dismissed over the objection of the guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

If there is such an objection, the trial court must conduct a hearing and specifically determine whether the petition is supported by a preponderance of the evidence and the child is in fact dependent and neglected. That determination may be appealed by the guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

This section makes it clear that the performance of the guardian ad litem's duties is intended primarily to benefit the child. People ex rel. D.L.C., 70 P.3d 584 (Colo. App. 2003).

Violation of the guardian ad litem's duties does not interfere with a parent's rights. People ex rel. D.L.C., 70 P.3d 584 (Colo. App. 2003).

Quasi-judicial immunity. A court appointed guardian ad litem in service of the public interest in the welfare of children is entitled to absolute quasi-judicial immunity. Short by Ossterhous v. Short, 730 F. Supp. 1307 (D. Colo. 1990).

Guardian ad litem is not required to make a recommendation in a hearing regarding the termination of parental rights. People in Interest of M.W., 796 P.2d 66 (Colo. App. 1990).

Determination of whether a guardian ad litem may be examined and cross-examined depends on the manner in which the guardian chooses to proceed in fulfilling the statutory requirements of the position. If a guardian presents a recommendation based on an independent investigation, the facts of which have not otherwise been introduced into evidence, the guardian functions as a witness in the proceedings and, thus, should be subject to examination and cross-examination as to the bases for the opinion and recommendation. If the guardian's recommendations are based upon the evidence received by the court from other sources, then they are analogous to arguments made by counsel and examination and cross-examination should not be permitted. Therefore, the trial court did not err in limiting a mother's examination of her children's guardian ad litem during the hearing on terminating the parent-child legal relationship where the record demonstrated that the guardian had chosen to examine the witnesses called by others and to present his recommendations in the form of legal argument based upon the facts and opinions testified to by others. People in Interest of J.E.B., 854 P.2d 1372 (Colo. App. 1993).

Grandparent who was allowed to intervene in dependency and neglect case was not entitled to be treated as the child's representative. When the state, the guardian ad litem, and the father agreed to dismiss the petition over grandmother's objection, the court was not required to hold an evidentiary hearing before granting the dismissal. People in Interest of G.S., 820 P.2d 1178 (Colo. App. 1991).

Evaluation of mother's relationship with her children not privileged under attorney-client privilege since mother requested court to appoint the psychologist. Subsection (2) requires the psychologist's reports be disclosed to the children and the children's guardian and prevented the privilege from attaching. People in Interest of O.J.S., 844 P.2d 1230 (Colo. App. 1992).

19-3-204. Temporary protective custody. (Repealed)

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 90:** Entire section repealed, p. 1037, § 6, effective April 3.

19-3-205. Continuing jurisdiction. (1) Except as otherwise provided in this article, the jurisdiction of the court over any child adjudicated as neglected or dependent shall continue until he becomes twenty-one years of age unless earlier terminated by court order.

(2) (a) Commencing January 1, 2012, the court shall consider the individual circumstances of each youth in out-of-home placement who is at least seventeen years of age but who has not yet reached eighteen years of age to determine if the youth is ready to become independent upon reaching eighteen years of age or whether the youth should remain under the care and supervision of the county until the youth reaches twenty-one years of age unless earlier terminated by court order. The court shall determine if the youth is engaged in one of the following activities:

(I) Completing secondary education or is enrolled in a program leading to an equivalent credential;

(II) Enrolled in an institution that provides postsecondary or vocational education;

(III) Participating in a program or activity designed to promote or remove barriers to employment; or

(IV) Employed for at least eighty hours per month.

(b) If a youth's medical condition makes him or her incapable of engaging in any of the activities described in subparagraphs (I) to (IV) of paragraph (a) of this subsection (2), the applicable county department shall maintain information about the youth's condition in the youth's case plan.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 2011:** Entire section amended, (HB 11-1079), ch. 83, p. 226, § 8, effective August 10.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-118 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The provisions of subsection (2) in House Bill 11-1079 have been relettered and renumbered on revision for ease of location.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Jurisdiction not affected by removing case from docket. A trial court order removing a parental rights termination case from the docket of cases maintained by the court did not affect the court's continuing statutory jurisdiction over the child involved. People in Interest of T.A.F. v. B.F., 624 P.2d 349 (Colo. App. 1980), cert. denied, 454 U.S. 825, 102 S. Ct. 115, 70 L. Ed.2d 99 (1981).

Whether good cause exists to retain jurisdiction is within the juvenile court's discretion and this determination is necessarily made on a case-by-case basis, after careful consideration of all the circumstances of the case. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

Juvenile court properly transferred jurisdiction to the Oglala Sioux Tribe since, even for an Indian child who lives off reservation, the tribal court is still the preferred jurisdiction under the federal Indian Child Welfare Act absent a showing of good cause to the contrary. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

Transfer of jurisdiction to tribal court was not improper where the juvenile court did not abuse its discretion in finding that the motion to transfer jurisdiction was timely and that no undue hardship would result if the Tribe obtained jurisdiction, and without consideration of the elements of the best interests of child set forth in § 14-10-124. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

No error in juvenile court's failure to hold a hearing before determining whether good cause existed to retain jurisdiction where all parties participated in preliminary arguments and briefing on this issue and none of the parties objected to trial court's oral and written orders indicating its reservation of the right to rule on the issue without further hearings. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

An order denying termination of the parent-child legal relationship does not "completely determine the rights of the parties involved" and is interlocutory in nature; therefore, such an order is not final and appealable. People in Interest of D.B., 855 P.2d 27 (Colo. App. 1993).

19-3-206. Representation of petitioner. In all proceedings brought under this article, the petitioner shall be represented by a county attorney, special county attorney, or city attorney of a city and county.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Failure of attorney representing county department of social services to sign verified dependency petition held to be harmless. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Sections 19-3-206 and 19-3-207 must be read in pari materia because they are part of the same code and apply to the same subject. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

Under this section, a district attorney is not authorized to prosecute proceedings under article 3. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

Allowing a district attorney to be appointed as a special county attorney would lead to the absurd result under § 19-3-207 of the district attorney arguing in favor of, and objecting to, the same motion. The court will not interpret statutes so as to lead to an absurd result. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

19-3-207. Inadmissibility of certain evidence. (1) Upon the request of the county attorney, special county attorney, or the city attorney of a city and county, the court shall set a hearing to determine the admissibility in a subsequent criminal proceeding arising from the same episode of information derived directly from testimony obtained pursuant to compulsory process in a proceeding under this article. The district attorney of the judicial district in which the matter is being heard shall be given five days' written notice of the hearing by the clerk of the court. Such hearing shall be held in camera, and the district attorney shall have the right to appear at the hearing and to object to the entry of the order holding such information inadmissible. The court shall not enter such an order if the district attorney presents prima facie evidence that the inadmissibility of such information would substantially impair his or her ability to prosecute the criminal case. The provisions of this subsection (1) shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

(2) No professional shall be examined in any criminal case without the consent of the respondent as to statements made pursuant to compliance with court treatment orders, including protective orders, entered under this article; except that such privilege shall not apply to any discussion of any future misconduct or of any other past misconduct unrelated to the allegations involved in the treatment plan. The admissibility of testimony as set forth in this subsection (2) shall not be subject to the hearing and notice provisions of subsection (1) of this section.

(2.5) Notwithstanding any other provision of law to the contrary, a juvenile's statements to a professional made in the course of treatment ordered by the court pursuant to this article shall not, without the juvenile's consent, be admitted into evidence in any criminal or juvenile delinquency case brought against the juvenile; except that the privilege shall not apply to statements regarding future misconduct.

(3) No admission made by a respondent in open court or by written pleading filed with the court to a petition in dependency or neglect may be used against him or her in any criminal prosecution, except for purposes of impeachment or rebuttal.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 90:** (2) amended, p. 1037, § 4, effective April 3. **L. 97:** Entire section amended, p. 518, § 5, effective July 1. **L. 2004:** (2.5) added, p. 274, § 1, effective April 5.

ANNOTATION

Sections 19-3-206 and 19-3-207 must be read in pari materia because they are part of the same code and apply to the same subject. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

Subsection (2) provides a privilege for statements made by a parent to a treating professional and therefore cannot be used for any purpose in a related criminal case. Therefore, any statements made by defendant father in course of sex abuse and domestic violence evaluation are privileged; thus his participation in the evaluation does not implicate his fifth amendment privilege against self-incrimination. People ex rel. I.L., 176 P.3d 878 (Colo. App. 2007).

Trial court erred in precluding social worker's testimony as to mother's statements in case involving stepfather. Because trial court apparently understood this section to bar the examination of the social worker in stepfather's criminal case as long as social worker qualified as a professional involved in the dependency and neglect proceeding, it failed to make sufficient findings to satisfy the additional statutory requirement that the statements at issue be ones made in compliance with court treatment orders or demonstrate the applicability of § 13-90-107, which is limited by its own terms to communications made by a client in the course of professional employment or psychotherapy. People v. Gabriesheski, 262 P.3d 653 (Colo. 2011).

19-3-208. Services - county required to provide - rules. (1) Each county or city and county shall provide a set of services, as defined in subsection (2) of this section, to children who are in out-of-home placement or meet the social services out-of-home placement criteria and to their families in the state of Colorado eligible for such services as determined necessary by an assessment and a case plan. A county or city and county may enter into an agreement with any other county, city and county, or group of counties to share in the provision of these services. Each county, city and county, or group of counties may enter into contracts with private entities for the provision of these services. Each county or city and county shall have a process in place whereby services can readily be accessed by children and families determined to be in need of such services described in subsection (2) of this section. For the purposes of this subsection (1), the requirements of providing services or a process shall be made available based upon the state's capacity to increase federal funding or any other moneys appropriated for these services.

(2) (a) "Services" shall be designed to accomplish the following goals:

(I) Promote the immediate health, safety, and well-being of children eligible for these services based upon the case assessment and individual case plan;

(II) Reduce the risk of future maltreatment of children who have previously been abused or neglected and protect the siblings of such children and other children who are members of the same household who may be subjected to maltreatment;

(III) Avoid the unnecessary placement of children into foster care resulting from child abuse and neglect, voluntary decisions by families, or the commission of status offenses;

(IV) Facilitate, if appropriate, the speedy reunification of parents with any of their children who have been placed in out-of-home placement;

(V) Ensure that the placement of a child is neither delayed nor denied due to consideration of the race, color, or national origin of the child or any other person unless such consideration is permitted pursuant to federal law; and

(VI) Promote the best interests of the child.

(b) The following services shall be available and provided, as determined necessary and appropriate by individual case plans, commencing on or after July 1, 1993:

(I) Screening, assessments, and individual case plans;

(II) Home-based family and crisis counseling;

(III) Information and referral services to available public and private assistance resources;

(IV) Visitation services for parents with children in out-of-home placement; and

(V) Placement services including foster care and emergency shelter.

(c) (Deleted by amendment, L. 94, p. 1054, § 4, effective May 4, 1994.)

(d) The following services shall be made available and provided based upon the state's capacity to increase federal funding or any other moneys appropriated for these services and as determined necessary and appropriate by individual case plans:

(I) Transportation to these services when other appropriate transportation is not available;

(II) Child care as needed according to a case plan, when other child care is not available;

(III) In-home supportive homemaker services;

(IV) Diagnostic, mental health, and health care services;

(V) Drug and alcohol treatment services;

(VI) After care services to prevent a return to out-of-home placement;

(VII) Family support services while a child is in out-of-home placement including home-based services, family counseling, and placement alternative services;

(VIII) Financial services in order to prevent placement; and

(IX) Family preservation services, which are brief, comprehensive, and intensive services provided to prevent the out-of-home placement of children or to promote the safe return of children to the home.

(e) The department of human services may promulgate such rules and regulations as are necessary to implement the provision of services pursuant to this article.

(f) It is the intent of the general assembly to use existing general fund moneys which have serviced the programs described in this subsection (2) to access federal funds.

Source: L. 93: Entire section added, p. 2014, § 4, effective July 1. **L. 94:** (1), (2)(c), and IP(2)(d) amended, p. 1054, § 4, effective May 4; (2)(a) amended, p. 672, § 1, effective July 1; (2)(e) amended, p. 2682, § 197, effective July 1. **L. 2008:** (2)(a)(I) amended, p. 812, § 1, effective May 14. **L. 2010:** (2)(a)(V) amended, (HB 10-1106), ch. 278, p. 1274, § 5, effective May 26.

ANNOTATION

Absent safety concerns, a parent is entitled to face to face visitation, and correspondence between parents and children does not constitute visitation. People ex rel. D.G., 140 P.3d 299 (Colo. App. 2006).

Trial court may not delegate the determination of entitlement to visitation to case-workers, therapists, and others. People ex rel. D.G., 140 P.3d 299 (Colo. App. 2006).

Applied in People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

19-3-208.5. Pilot program - legislative declaration - child welfare - mental health services - rules - repeal. (1) The general assembly hereby finds and declares that:

(a) Child abuse and neglect is a serious and reprehensible problem in our society and state;

(b) A child who has been abused or neglected is at a significantly increased risk of suffering from mental health or behavioral issues;

(c) If a child who has been abused or neglected does not receive treatment for mental health or behavioral issues, those issues may significantly limit that child's quality of life and future productivity;

(d) A child who has been abused or neglected and who is not provided with treatment for mental health or behavioral issues has a significantly increased risk of involvement in substance abuse, crime, and teen pregnancy and is more likely to have lower performance results on standardized tests, to repeat a grade, or to experience depression or suicidal behavior;

(e) The social and medical issues that may arise in the future for a child who has been abused or neglected and who has not received treatment for mental health or behavioral issues will be more likely to result in a substantial increase in costs to the state for juvenile and correctional facilities, alcohol and drug abuse programs, and loss of productivity;

(f) Providing mental health screenings, evaluations, and mental health services is necessary to creating the best opportunity for a child who is the victim of child abuse or neglect to have a bright future and lead a productive life;

(g) Including mental health screenings, evaluations, and mental health services for

siblings of children who are the subject of a substantiated case of abuse or neglect may increase the likelihood of more effective and positive outcomes for everyone involved; and

(h) Establishing a pilot program concerning child welfare and mental health services will provide the opportunity to evaluate the effectiveness of providing mental health screenings and evaluations and mental health services for children from four through ten years of age who are the subject of a substantiated case of abuse or neglect and for siblings to whom they are related.

(2) There is hereby created the child welfare and mental health services pilot program, referred to in this section as the "pilot program", in the state department of human services. The purpose of the pilot program is to provide mental health screenings and evaluations and mental health services for any child who is from four through ten years of age and who is the subject of a case of abuse or neglect that has been substantiated by a county department of social services and to evaluate the effectiveness of providing such services. The pilot program shall provide mental health screenings and evaluations and mental health services regardless of whether the child remains at home with his or her parents, is placed in foster or kinship care, or is under court supervision. The pilot program shall also provide mental health screenings and evaluations and mental health services to siblings of the abused or neglected child.

(3) Notwithstanding the provisions of subsection (2), any child who is receiving services through the pilot program shall continue to be eligible to receive services through the pilot program after his or her tenth birthday.

(4) On or before July 1, 2015, the state department of human services shall issue a request for proposals for the selection of a contractor for the development of the pilot program pursuant to this section. The state department of human services shall establish criteria for the selection of the pilot program contractor, including the expertise of the contractor related to the requirements of the pilot program, the capabilities and resources of the contractor necessary to perform the work, and the quality of the application. On or before April 1, 2016, the state department of human services shall promulgate rules necessary to implement the provisions of this section. The rules shall include, but need not be limited to, criteria based upon scientifically rigorous methods for evaluating the effectiveness of the pilot program.

(5) Beginning on or before July 1, 2016, and ending June 30, 2019, the pilot program shall be implemented in a minimum of three Colorado counties or regions selected by the executive director of the state department of human services based upon applications submitted by a department of human or social services for one or more counties, in conjunction with local community mental health centers, and criteria established by the state department, including a commitment of resources by or through the county, the quality of the county's application, and the historical practices and collaborative initiatives of the county.

(6) The pilot program shall provide the following services and programs:

(a) Age-appropriate mental health screenings for children and their siblings who meet the criteria described in subsection (2) of this section;

(b) A mental health evaluation if the mental health screening described in paragraph (a) of this subsection (6) determines the child or his or her sibling needs such an evaluation;

(c) Mental health services, including evidence-based practices or available practices, in community mental health center settings for children and their siblings based upon the results of the mental health evaluation performed pursuant to paragraph (b) of this subsection (6) and included in the case management plan;

(d) Referrals to other agencies and programs as appropriate for children and their siblings based upon the results of the mental health evaluation performed pursuant to paragraph (b) of this subsection (6);

(e) Integrated child welfare and mental health programs for children and their siblings eligible for services through the pilot program; and

(f) Training programs to provide training and consultation on evidence-based and available practices and the provision of integrated child welfare and community mental health center programs.

(7) If a child is eligible to receive pilot program services pursuant to subsection (3) of this section and he or she is also eligible to receive public assistance funding for those services through the "Colorado Medical Assistance Act", article 4 of title 25.5, C.R.S., or the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., the pilot program services shall be funded with the public assistance moneys first, with any balance to be funded out of moneys available through the pilot program.

(8) The state department of human services shall conduct an evaluation of the pilot program based upon the criteria established pursuant to subsection (4) of this section, as well as the costs of the pilot program, and submit a report based on its evaluation to the health and human services committees of the house of representatives and the senate, or any successor committees, on or before January 30, 2019.

(9) This section is repealed, effective July 1, 2019.

Source: L. 2008: Entire section added, p. 812, § 2, effective May 14. **L. 2009:** (4), (5), (8), and (9) amended, (SB 09-207), ch. 8, p. 60, § 1, effective March 2.

19-3-209. Individual case plan - required. An individual case plan, developed with the input or participation of the family, is required to be in place for all abused and neglected children and the families of such children in each case which is opened for the provision of services beyond the investigation of the report of child abuse or neglect, regardless of whether the child or children involved are placed out of the home or under court supervision.

Source: L. 93: Entire section added, p. 2014, § 4, effective July 1.

19-3-210. Foster parents' bill of rights study - task force created - principles to be examined - report. (Repealed)

Source: L. 93: Entire section added, p. 1246, § 1, effective June 6. **L. 94:** (1) and (4) amended, p. 2682, § 198, effective July 1. **L. 96:** Entire section repealed, p. 1249, § 124, effective August 7.

Editor's note: Section 19-3-210 was enacted as section 19-3-209 by House Bill 93-1179, but was renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

19-3-211. Conflict resolution process - rules - definitions. (1) (a) The state department, in conjunction with the attorney general, shall adopt rules concerning the statewide implementation of a conflict resolution process in each county and city and county pursuant to the provisions of this section. The purpose of such conflict resolution process is to provide a forum for grievances concerning the conduct of county department personnel in performing their duties pursuant to this article.

(b) A citizen review panel shall be created in each county and city and county. The members of such citizen review panel shall be appointed by the governing body without influence from the state department or the county department, be representative of the community, have demonstrable personal or professional knowledge and experience with children, and not be employees or agents of the state department or any county department. At least one member of the citizen review panel in each county and city and county shall be the parent of a minor child at the time of his or her appointment to serve on such panel.

(c) The conflict resolution process shall provide for the resolution of grievances as follows:

(I) Transmittal of all grievances to the county director for internal resolution by the county department within ten working days after receipt of the grievance;

(II) Closure of the grievance and issuance of a written final decision if the county department has resolved the grievance to the complainant's satisfaction;

(III) Referral of the grievance to the citizen review panel upon the request of the complainant if the county department has not resolved the grievance to the complainant's satisfaction;

(IV) Review by the citizen review panel of the grievance and the county department's proposed resolution of the grievance within thirty days after receipt of the referral;

(V) Written notification by the citizen review panel to the complainant and the county director of its recommendation concerning the grievance and the basis for its recommendation;

(VI) Closure of the grievance and issuance of a written final decision by the county director if the county department agrees with the recommendation of the citizen review panel;

(VII) Referral of a grievance to the governing body for review if the county department or the complainant disagrees with the recommendation of the citizen review panel.

(d) The governing body shall submit a written decision containing its recommendation and the basis for its recommendation to the county director and any county department employee who is the subject of a grievance, and the county director shall issue a written final decision that shall include the county director's plan for implementation of the final decision.

(e) Any recommendations of the citizen review panel and of the governing body shall be limited to actions within the authority of the county director including, but not limited to, recommendations for case reassignment, personnel training, and disciplinary action concerning a county department employee. If disciplinary action is initiated against a county department employee as a result of recommendations, the employee shall be entitled to the rights, including procedural rights to appeal, that the employee has through the merit system or other applicable personnel system under which the employee is employed.

(f) A citizen review panel and any governing body shall have access to child abuse or neglect reports and any information from the complete case file that the governing body believes is pertinent to the grievance, which shall be reviewed solely for the purpose of resolving grievances pursuant to the provisions of this section; except that access to identifying information concerning any person who reported child abuse or neglect shall not be provided and no participant in the conflict resolution process shall divulge or make public any confidential information contained in a report of child abuse or neglect or in other case file records to which he or she has been provided access.

(g) The county department shall prepare a final report to the citizen review panel within thirty days after the issuance of any final decision in the conflict resolution process that shall include the disposition of each grievance referred to the citizen review panel in a manner not inconsistent with applicable state and county personnel rules.

(h) The complainant or county department employee who is the subject of the grievance shall receive copies of the following:

(I) The written decision of the governing body required pursuant to paragraph (d) of this subsection (1);

(II) The final written decision of the county director required pursuant to paragraph (d) of this subsection (1);

(III) The final report of the county department required pursuant to paragraph (g) of this subsection (1).

(2) The state department shall create a system for monitoring compliance with this section that shall include annual reports prepared by each county and city and county as to the grievances received and their disposition. Such annual reports shall be made available to the citizen review panels and the state department and shall be available for public review.

(3) (a) At the request of the complainant, the county department, or the subject of the grievance, each citizen review panel, as part of its review, may take informal testimony submitted voluntarily and without fee by experts or other individuals, including county department personnel.

(b) Each citizen review panel may request and receive information from any other county or city and county that may be pertinent to the grievance.

(4) Each county department shall implement the conflict resolution process. The state department shall promulgate rules governing the implementation of the process in the following areas:

(a) Procedures for making relevant information concerning the conflict resolution process public;

(b) Time frames for the citizen review panel's and the governing body's written notification of recommendations; and

(c) Procedures for processing grievances, for determining if a grievance is within the scope of the conflict resolution process, and for receiving testimony and other information from the complainant, the county department, and the subject of the grievance.

(5) (a) Nothing in this section shall be construed to direct or authorize any participant in the conflict resolution process to use the process to interfere with any civil or criminal investigation or judicial proceeding, to seek relief from any court action, or to seek a remedy that is within the authority of a court having jurisdiction over a pending proceeding.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (5), a county department shall not be precluded from presenting any relevant evidence in a pending civil or criminal investigation or proceeding that the county department has obtained in the course of fulfilling its duties in the conflict resolution process pursuant to the provisions of this section.

Source: L. 94: Entire section added, p. 2081, § 1, effective June 3. **L. 96:** (6) repealed, p. 85, § 11, effective March 20; (2)(h) repealed, p. 1247, § 118, effective August 7. **L. 97:** Entire section R&RE, p. 1434, § 9, effective July 1. **L. 2004:** (1)(a) and IP(4) amended, p. 194, § 8, effective August 4.

19-3-212. Notice of rights and remedies for families. (1) The state department shall prepare, with the assistance of the attorney general, on a standardized written form, a detailed informational notice of rights and remedies for families subject to the provisions of this article.

(2) The notice prepared pursuant to subsection (1) of this section shall be supplied to all social service and law enforcement agencies in the state and shall be delivered to all parents and families from whom children are removed under court order or by law enforcement personnel, along with a copy of the court order directing removal of the child or children from the home. In addition to the notification on the court order, the informational notice shall contain a statement as to the cause of the removal of the child or children. The notice shall also contain disclosure of the availability of the conflict resolution process to persons who are the subject of any child abuse or neglect report and to the parents, Indian custodians, guardian, or legal custodian of a child who is the subject of any child abuse or neglect report. The standardized written notice form prepared pursuant to subsection (1) of this section shall also include a notification of rights of the parents, Indian custodians, guardians, or legal custodians of Indian children under the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq.

(3) The notice prepared pursuant to subsection (1) of this section shall be available for public inspection at a review and comment hearing prior to its adoption.

Source: L. 94: Entire section added, p. 2081, § 1, effective June 3. **L. 97:** (2) amended, p. 1437, § 10, effective July 1. **L. 2002:** (1) and (2) amended, p. 786, § 5, effective May 30.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (November 2002).

19-3-213. Placement criteria. (1) In any case in which the county department recommends placement out of the home for a child or in which a child is in out-of-home placement, the court, the guardian ad litem, the county department, any CASA volunteer, and other parties shall consider the best interests of the child and shall comply with the following placement criteria:

(a) Prior to the change of placement of a child, the county department shall, to the extent possible, notify the guardian ad litem, any CASA volunteer, and other parties. If the guardian ad litem or other party disagrees with the change of placement, he or she may seek an emergency hearing concerning the appropriate placement for a child. In an emergency, the county department may proceed to make the change of placement prior to any requested hearing.

(b) Except in exceptional circumstances, no child shall remain in an emergency, short-term, or shelter facility for more than sixty days, nor shall a child be moved from one such facility to another, unless all reasonable efforts to return the child to the child's home or to place the child in a more permanent setting have been exhausted.

(c) (I) If the child is part of a sibling group, as defined in section 19-1-103 (98.5), and the sibling group is being placed in foster care, the county department shall make thorough efforts to locate a joint placement for all of the children in the sibling group. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(II) Consideration of the placement of children together as a sibling group in foster care shall not be construed as requiring the removal of a child from his or her home and placement into foster care if that is not in the best interests of the child.

(III) In any proceeding under this article involving a sibling group, the judge shall review the family services plan document regarding placement of siblings.

(d) Prior to the change of placement of a child, all parties shall attempt to promote educational stability for the child by taking into account the child's existing educational situation and, to the extent possible and in accordance with the child's best interests, selecting a change of placement that enables the child to remain in the existing educational situation or to transfer to a new educational situation that is comparable to the existing situation.

(2) If a child runs away from an out-of-home placement facility, the person in charge of the placement facility, foster parent, relative, or other placement provider shall notify the county department as soon as possible after discovering that the child has run away. The county department shall notify the court and other parties within ten days after the county department has received notice and take appropriate steps to locate the child.

Source: L. 97: Entire section added, p. 1438, § 11, effective July 1. **L. 2000:** (1) amended, p. 475, § 3, effective July 1. **L. 2003:** (1)(c)(I) amended, p. 2622, § 1, effective June 5. **L. 2008:** (1)(d) added, p. 471, § 3, effective April 17.

Cross references: For the legislative declaration contained in the 2008 act enacting subsection (1)(d), see section 1 of chapter 147, Session Laws of Colorado 2008.

19-3-214. Placement reporting. (1) Each county department shall maintain and update on a monthly basis a report of the number of children who have been removed from their homes and placed in the temporary custody of the county department for the preceding month. The report shall indicate whether a child who has been placed out of the home has been placed with relatives.

(2) The state department shall submit an annual report to the joint budget committee of the general assembly no later than December 1 of each year that compiles the monthly reports of the number of children who have been placed out of the home in each county or city and county for the preceding year as required pursuant to subsection (1) of this section.

Source: L. 97: Entire section added, p. 1438, § 11, effective July 1.

19-3-215. Foster care - capacity may be exceeded for sibling groups. The state board of human services shall promulgate rules that allow foster care homes to exceed capacity for the number of children and for square footage requirements in order to accommodate the joint placement of sibling groups in a single foster care home.

Source: L. 2000: Entire section added, p. 478, § 9, effective July 1.

PART 3

CHILD ABUSE OR NEGLECT

19-3-301. Short title. This part 3 shall be known and may be cited as the "Child Protection Act of 1987".

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-302. Legislative declaration. The general assembly hereby declares that the complete reporting of child abuse is a matter of public concern and that, in enacting this part 3, it is the intent of the general assembly to protect the best interests of children of this state and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is also the intent of the general assembly that child protection teams publicly discuss public agencies' responses to child abuse and neglect reports so that the public and the general assembly may be better informed concerning the operation and administration of this part 3.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-303. Definitions. (Repealed)

Source: L. 87: Entire title R&RE, p. 763, § 1, effective October 1. **L. 91:** (2.5) and (10) amended and (4.5), (4.7), and (9.5) added, p. 222, § 3, effective May 24. **L. 92:** (9.5) amended, p. 2175, § 29, effective June 2. **L. 93:** (2) amended, p. 1250, § 2, effective June 6. **L. 94:** (1)(a)(IV) added, p. 1055, § 5, effective May 4; (9) amended, p. 2683, § 199, effective July 1. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-3-304. Persons required to report child abuse or neglect. (1) (a) Except as otherwise provided by section 19-3-307, sections 25-1-122 (4) (d) and 25-4-1404 (1) (d), C.R.S., and paragraph (b) of this subsection (1), any person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made of such fact to the county department or local law enforcement agency.

(b) The reporting requirement described in paragraph (a) of this subsection (1) shall not apply if the person who is otherwise required to report does not:

(I) Learn of the suspected abuse or neglect until after the alleged victim of the suspected abuse or neglect is eighteen years of age or older; and

(II) Have reasonable cause to know or suspect that the perpetrator of the suspected abuse or neglect:

(A) Has subjected any other child currently under eighteen years of age to abuse or neglect or to circumstances or conditions that would likely result in abuse or neglect; or

(B) Is currently in a position of trust, as defined in section 18-3-401 (3.5), C.R.S., with regard to any child currently under eighteen years of age.

(2) Persons required to report such abuse or neglect or circumstances or conditions include any:

(a) Physician or surgeon, including a physician in training;

(b) Child health associate;

(c) Medical examiner or coroner;

(d) Dentist;

(e) Osteopath;

(f) Optometrist;

(g) Chiropractor;

(h) Podiatrist;

(i) Registered nurse or licensed practical nurse;

(j) Hospital personnel engaged in the admission, care, or treatment of patients;

(k) Christian science practitioner;

(l) Public or private school official or employee;

(m) Social worker or worker in any facility or agency that is licensed or certified pursuant to part 1 of article 6 of title 26, C.R.S.;

(n) Mental health professional;

(o) Dental hygienist;

(p) Psychologist;

(q) Physical therapist;

(r) Veterinarian;

(s) Peace officer as described in section 16-2.5-101, C.R.S.;

(t) Pharmacist;

(u) Commercial film and photographic print processor as provided in subsection (2.5) of this section;

(v) Firefighter as defined in section 18-3-201 (1), C.R.S.;

(w) Victim's advocate, as defined in section 13-90-107 (1) (k) (II), C.R.S.;

(x) Licensed professional counselors;

(y) Licensed marriage and family therapists;

(z) Registered psychotherapists;

(aa) (I) Clergy member.

(II) The provisions of this paragraph (aa) shall not apply to a person who acquires reasonable cause to know or suspect that a child has been subjected to abuse or neglect during a communication about which the person may not be examined as a witness pursuant to section 13-90-107 (1) (c), C.R.S., unless the person also acquires such reasonable cause from a source other than such a communication.

(III) For purposes of this paragraph (aa), unless the context otherwise requires, "clergy member" means a priest, rabbi, duly ordained, commissioned, or licensed minister of a church, member of a religious order, or recognized leader of any religious body.

(bb) Registered dietitian who holds a certificate through the commission on dietetic registration and who is otherwise prohibited by 7 CFR 246.26 from making a report absent a state law requiring the release of this information;

(cc) Worker in the state department of human services;

(dd) Juvenile parole and probation officers;

(ee) Child and family investigators, as described in section 14-10-116.5, C.R.S.;

(ff) Officers and agents of the state bureau of animal protection, and animal control officers;

(gg) The child protection ombudsman as created in article 3.3 of this title;

(hh) Educator providing services through a federal special supplemental nutrition program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786.

(2.5) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative, or slide depicting a child engaged in an act of sexual conduct shall report such fact to a local law enforcement agency immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative, or slide attached within thirty-six hours of receiving the information concerning the incident.

(3) In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the local law enforcement agency or the county department.

(3.5) No person, including a person specified in subsection (1) of this section, shall knowingly make a false report of abuse or neglect to a county department or local law enforcement agency.

(4) Any person who willfully violates the provisions of subsection (1) of this section or who violates the provisions of subsection (3.5) of this section:

(a) Commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;

(b) Shall be liable for damages proximately caused thereby.

Source: L. 87: Entire title R&RE, p. 764, § 1, effective October 1. **L. 90:** (2)(m) amended, P. 1394, § 2, effective May 24; (3.5) added and IP(4) amended, p. 1023, § 1, effective July 1. **L. 93:** (1) amended, p. 1609, § 1, effective June 6; (2) amended, p. 1735, § 29, effective July 1. **L. 95:** (2)(w) added, p. 949, § 5, effective July 1. **L. 96:** (2.5) amended, p. 83, § 8, effective March 20; (2)(m) amended, p. 265, § 16, effective July 1. **L. 97:** (2)(v) amended, p. 1013, § 19, effective August 6. **L. 2001:** (2)(x), (2)(y), and (2)(z) added, p. 160, § 1, effective July 1. **L. 2002:** (1) amended, p. 568, § 2, effective May 24; (2)(aa) added, p. 1145, § 1, effective June 3; (1) amended, p. 1592, § 30, effective July 1; (4)(a) amended, p. 1527, § 231, effective October 1. **L. 2003:** (2)(m) amended and (2)(cc) added, p. 660, § 1, effective March 20; (2)(bb) added, p. 666, § 1, effective March 20; (2)(s) amended, p. 1616, § 18, effective August 6. **L. 2005:** (2)(dd), (2)(ee), and (2)(ff) added, p. 357, § 1, effective April 22; (2)(ee) amended, p. 963, § 9, effective July 1. **L. 2010:** (2)(gg) added, (SB 10-171), ch. 225, p. 982, § 4, effective May 14; (1) amended, (SB 10-066), ch. 418, p. 2060, § 1, effective June 10; (2)(h) amended, (HB 10-1224), ch. 420, p. 2161, § 25, effective July 1. **L. 2011:** IP(2) and (2)(z) amended, (SB 11-187), ch. 285, p. 1328, § 71, effective July 1; (2)(hh) added, (SB 11-034), ch. 125, p. 390, § 1, effective January 1, 2012.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (2)(cc) was originally numbered as (2)(bb) in House Bill 03-1037 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4)(a), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2005 act amending subsection (2)(ee), see section 1 of chapter 244, Session Laws of Colorado 2005.

ANNOTATION

Law reviews. For article, "Towards a More Practical Central Registry", see 51 Den. L.J. 509 (1974). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For comment, "Warning Bell: The Inherent Difficulties of Responding to Student-on-Student Sexual Harassment in Col-

orado Middle Schools", see 76 U. Colo. L. Rev. 813 (2005).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A violation of state law duty, by itself, is insufficient to give rise to a claim under 42 U.S.C. § 1983. Plaintiffs could not maintain a substantive due process claim based on defendants' alleged violations of their duties under the Child Protection Act to report and investigate allegations of child abuse. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp.2d 1139 (D. Colo. 2000).

Defendants' alleged failure to report and investigate child abuse allegations does not deprive plaintiffs of a protected liberty interest without due process of law. While plaintiffs may have had an expectation that some form of protective services would be taken if defendants complied with the statutory requirements, the expectation of action is not enough to create a protected liberty interest under the due process clause of the U.S. Constitution. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp.2d 1139 (D. Colo. 2000).

Protective orders prohibiting district attorney and law enforcement officials from questioning parents regarding alleged sexual abuse of children and prohibiting use in any criminal or civil proceeding of any statement made by parents to therapist during the course of court-ordered treatment plans could be implemented without violating reporting requirement of this section where in each case suspected sexual abusive conduct had been reported and the children adjudicated dependent or neglected. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

This section was irreconcilable with § 12-63.5-115 (now repealed and replaced by § 12-43-218) which made it a criminal act for a social worker to reveal a privileged communication from a client, and, since § 12-63.5-115 was enacted later in time, it prevailed. Human Servs., Inc. v. Woodard, 765 P.2d 1052 (Colo. App. 1988).

Trial court's admission of child abuse reports by psychologist based upon privileged communications between psychologist and defendant did not constitute error because allowing privilege to prevent use of child abuse reports would defeat one of purposes of reports to aid in the investigation and prosecution of child abusers. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

In order to harmonize potential statutory conflict between this section and § 13-90-107 concerning privileged communications prior to 1989 amendment to § 19-3-311, this section required psychologists to report suspected child abuse to the appropriate authorities while § 13-90-107 (1)(g) prohibited psychologists from testifying against their clients without consent. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Information about defendant's background and demeanor during visit to mental health facility fell within scope of child abuse reporting statute. The information reported verbally by counselor in phone call to police and in subsequent written form was relevant to counselor's ability to determine whether defendant's "visions" had any basis in reality and as such constituted a legitimate report of suspected child abuse and was therefore exempt from confidentiality requirements under federal statute for substance abuse treatment records. People v. Jimenez, 217 P.3d 841 (Colo. App. 2008).

19-3-304.5. Emergency possession of certain abandoned children. (1) If a parent voluntarily delivers a child to a firefighter, as defined in section 18-3-201 (1), C.R.S., or a hospital staff member who engages in the admission, care, or treatment of patients, when such firefighter is at a fire station or such hospital staff member is at a hospital, the firefighter or hospital staff member shall, without a court order, take temporary physical custody of the child if:

(a) The child is seventy-two hours old or younger; and

(b) The parent did not express an intent to return for the child.

(2) If a firefighter or hospital staff member takes temporary physical custody of a child pursuant to subsection (1) of this section, the firefighter or hospital staff member shall:

(a) Perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health or safety of the child during the temporary physical custody; and

(b) Notify a law enforcement officer and the county department of the abandonment within twenty-four hours after the abandonment.

(3) A firefighter or hospital staff member shall incur no civil or criminal liability for any good faith acts or omissions performed pursuant to this section.

(4) Upon receipt of notice pursuant to subsection (2) of this section, a law enforcement officer shall take the abandoned child into temporary custody pursuant to section 19-3-401.

(4.5) Any document prepared by a firefighter, member of a hospital staff, or law

enforcement officer pursuant to this section shall be a dependency and neglect record and shall be subject to the confidentiality provisions of section 19-1-307.

(5) Each county department of social services shall maintain and update on a monthly basis a report of the number of children who have been abandoned pursuant to this section. Each county department of social services shall submit such information to the state department of human services.

(6) The state department of human services shall submit an annual report to the general assembly, beginning January 1, 2001, that compiles the monthly reports, required pursuant to subsection (5) of this section, of the number of children abandoned pursuant to this section.

(7) The general assembly hereby finds, determines, and declares that a county department of social services shall place an abandoned child with a potential adoptive parent as soon as possible. The general assembly further declares that, as soon as lawfully possible, a county department of social services shall proceed with a motion to terminate the parental rights of a parent who abandons a child.

(8) A parent who utilizes the provisions of this section shall not, for that reason alone, be found to be responsible in a confirmed report of abuse or neglect.

Source: L. 2000: Entire section added, p. 2004, § 2, effective June 3. **L. 2002:** (4.5) added, p. 168, § 1, effective April 1. **L. 2003:** (2)(b) amended and (8) added, p. 769, § 1, effective March 25. **L. 2006:** (8) amended, p. 1493, § 24, effective June 1.

19-3-305. Required report of postmortem investigation. (1) Any person who is required by section 19-3-304 to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to a local law enforcement agency and to the appropriate medical examiner. The local law enforcement agency and the medical examiner shall accept such report for investigation and shall report their findings to the local law enforcement agency, the district attorney, and the county department.

(2) The county department shall forward a copy of such report to the state department of human services.

Source: L. 87: Entire title R&RE, p. 765, § 1, effective October 1. **L. 2003:** (2) amended, p. 1405, § 9, effective January 1, 2004.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (2), see section 1 of chapter 196, Session Laws of Colorado 2003.

19-3-306. Evidence of abuse - color photographs and X rays. (1) Any child health associate, person licensed to practice medicine in this state, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care, or treatment of patients, medical examiner, coroner, social worker, psychologist, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X rays of the child.

(2) Copies or duplicate originals of any color photographs which show evidence of child abuse shall be immediately forwarded to the county department or to the local law enforcement agency. Original photographs shall be made available upon the request of such department or agency. X rays which show evidence of child abuse or copies of the X-ray report, or both, shall be made available upon request to the county department or the local law enforcement agency. Any person who forwards original photographs or X rays pursuant to this section shall maintain copies or duplicate originals thereof.

Source: L. 87: Entire title R&RE, p. 766, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-307. Reporting procedures. (1) Reports of known or suspected child abuse or neglect made pursuant to this article shall be made immediately to the county department or the local law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The county department shall submit a report of confirmed child abuse or neglect within sixty days of receipt of the report to the state department in a manner prescribed by the state department.

(2) Such reports, when possible, shall include the following information:

(a) The name, address, age, sex, and race of the child;

(b) The name and address of the person responsible for the suspected abuse or neglect;

(c) The nature and extent of the child's injuries, including any evidence of previous cases of known or suspected abuse or neglect of the child or the child's siblings;

(d) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;

(e) The family composition;

(f) The source of the report and the name, address, and occupation of the person making the report;

(g) Any action taken by the reporting source;

(h) Any other information that the person making the report believes may be helpful in furthering the purposes of this part 3.

(2.5) Notwithstanding the requirements set forth in subsection (2) of this section, any officer or employee of a county, district, or municipal public health agency or state department of public health and environment who makes a report pursuant to section 25-1-122 (4) (d) or 25-4-1404 (1) (d), C.R.S., shall include only the information described in said sections.

(3) (a) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.

(b) When the county department reasonably believes a criminal act of abuse or neglect of a child in foster care has occurred, the county department shall transmit immediately a copy of the written report prepared by the county department in accordance with subsection (1) of this section to the district attorney's office and to the local law enforcement agency.

(4) A written report from persons or officials required by this part 3 to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of section 19-1-307.

Source: L. 87: Entire title R&RE, p. 766, § 1, effective October 1. **L. 90:** (4) amended, p. 1012, § 6, effective July 1. **L. 93:** (2.5) added, p. 1609, § 2, effective June 6. **L. 94:** (2.5) amended, p. 2737, § 364, effective July 1. **L. 98:** (4) amended, p. 822, § 27, effective August 5. **L. 2001:** (3) amended, p. 758, § 9, effective June 1. **L. 2003:** (1) amended, p. 1406, § 10, effective January 1, 2004. **L. 2010:** (2.5) amended, (HB 10-1422), ch. 419, p. 2075, § 36, effective August 11.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 196, Session Laws of Colorado 2003.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Information about defendant's background and demeanor during visit to mental health facility fell within scope of child abuse reporting statute. The information reported verbally by counselor in phone call to police and in subsequent written form was relevant to counselor's ability to determine whether defendant's "visions" had any basis in reality and as such constituted a legitimate report of suspected child abuse and was therefore exempt from confidentiality requirements under federal statute for substance abuse treatment records. People v. Jimenez, 217 P.3d 841 (Colo. App. 2008).

Applied in People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

19-3-308. Action upon report of intrafamilial, institutional, or third-party abuse - investigations - child protection team - rules - repeal. (1) (a) The county department shall respond immediately upon receipt of any report of a known or suspected incident of intrafamilial abuse or neglect to assess the abuse involved and the appropriate response to the report. The assessment shall be in accordance with rules adopted by the state board of social services to determine the risk of harm to such child and the appropriate response to such risks. Appropriate responses shall include, but are not limited to, screening reports that do not require further investigation, providing appropriate intervention services, pursuing reports that require further investigation, and conducting immediate investigations. The immediate concern of any assessment or investigation shall be the protection of the child, and, where possible, the preservation of the family unit.

(b) Repealed.

(c) It shall be an appropriate response to a report of a known or suspected incident of intrafamilial abuse or neglect for a county department to require a parent or a child placement agency assisting a parent to verify that a petition for relinquishment has been filed or is imminent and to deem that a report does not require additional investigation pending finalization of the relinquishment in the following circumstance:

(I) When the report of a known or suspected incident of intrafamilial abuse or neglect involves a case in which the child tests positive at birth for either a schedule I or a schedule II controlled substance; and

(II) The parents of the child have filed or a child placement agency assisting the parents has filed a petition for relinquishment or anticipates filing a petition for relinquishment pursuant to the expedited relinquishment process described in section 19-5-103.5.

(1.5) (a) Upon referral to the county department, the county department shall assess the possibility of abuse or neglect.

(b) If, during the investigation and assessment process, the county department determines that the family's issues may be attributable to the child's mental health status, rather than dependency or neglect issues, and that mental health treatment services pursuant to section 27-67-104, C.R.S., may be more appropriate, the county department shall contact the mental health agency, as that term is defined in section 27-67-103 (6), C.R.S. Within ten days after the commencement of the investigation, the county department shall meet with a representative from the mental health agency and the family. The county department, in conjunction with the mental health agency, shall jointly determine whether mental health services should be provided pursuant to section 27-67-104, C.R.S., or whether the provision of services through the county department is more appropriate.

(c) (I) On and after April 15, 2010, if a county department that is participating in the differential response pilot program pursuant to section 19-3-308.3 determines from an assessment performed pursuant to paragraph (a) of this subsection (1.5) that the known or suspected incident of intrafamilial abuse or neglect that was the basis for the assessment is of low or moderate risk, the county department, in lieu of performing an investigation pursuant to this section, may proceed in accordance with the provisions of section 19-3-308.3.

(II) This paragraph (c) is repealed, effective July 1, 2015.

(2) The investigation, to the extent that it is reasonably possible, shall include:

(a) The credibility of the source or the report;

(b) The nature, extent, and cause of the abuse or neglect;

(c) The identity of the person responsible for such abuse or neglect;

(d) The names and conditions of any other children living in the same place;

(e) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;

(f) All other data deemed pertinent.

(3) (a) The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect. The investigation may include a visit to the child's place of residence or place of custody or wherever the child may be located, as indicated by the report. In addition, in connection with any investigation, the alleged perpetrator shall be advised as to the allegation of abuse and neglect and the circumstances surrounding such allegation and shall be afforded an opportunity to respond.

(b) If admission to the child's place of residence cannot be obtained, the juvenile court or the district court with juvenile jurisdiction, upon good cause shown, shall order the responsible person or persons to allow the interview, examination, and investigation. Should the responsible person or persons refuse to allow the interview, examination, and investigation, the juvenile court or the district court with juvenile jurisdiction shall hold an immediate proceeding to show cause why the responsible person or persons shall not be held in contempt of court and committed to jail until such time as the child is produced for the interview, examination, and investigation or until information is produced that establishes that said person or persons cannot aid in providing information about the child. Such person or persons may be held without bond. During the course of any such hearing, the responsible person or persons, or any necessary witness, may be granted use immunity by the district attorney against the use of any statements made during such hearing in a subsequent or pending criminal action.

(4) (a) The county department, except as provided in subsections (5) and (5.3) of this section, shall be the agency responsible for the coordination of all investigations of all reports of known or suspected incidents of intrafamilial abuse or neglect. The county department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The county department shall conduct the investigation in conjunction with the local law enforcement agency, to the extent a joint investigation is possible and deemed appropriate, and any other appropriate agency. The county department may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The county department shall provide for persons to be continuously available to respond to such reports. Contiguous counties may cooperate to fulfill the requirements of this subsection (4). The county department or other agency authorized to conduct the investigation pursuant to this subsection (4), for the purpose of such investigation, shall have access to the records and reports of child abuse or neglect maintained by the state department for information under the name of the child or the suspected perpetrator.

(b) Upon the receipt of a report, if the county department reasonably believes that an incident of intrafamilial abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family and may file a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of such child. If, before the investigation is completed, the opinion of the investigators is that assistance of the local law enforcement agency is necessary for the protection of the child or other children under the same care, the local law enforcement agency shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with sections 19-3-401 (1) (a) and 19-3-405.

(4.5) (a) The state department shall adopt rules setting forth procedures for the investigation of reports of institutional abuse. Such rules may provide for investigations to be conducted by an agency that contracts with the state and has staff trained to conduct investigations, the county departments, or any other entity the state department deems appropriate. The procedures may include the use of a review team responsible to make recommendations to the state department concerning the procedures for investigating institutional abuse.

(a.5) (I) The state department shall adopt rules that specify that, prior to notice of an investigation being sent to the parents or legal guardians of children cared for at a child care center, as that term is defined in section 26-6-102 (1.5), C.R.S., or a family child care home, as that term is defined in section 26-6-102 (4), C.R.S., which children were not involved in the incident being investigated, the state department or the county department shall ensure that:

(A) The incident of alleged child abuse or neglect that prompted the investigation is at the level of a medium, severe, or fatal incident of abuse or neglect, as defined by rule of the state board, or involves sexual abuse;

(B) The state department or county department has made a determination as to whether notice to the parents or legal guardians of the uninvolved children is essential to the investigation of the specific allegation or is necessary for the safety of children cared for at the facility; and

(C) The state department or county department has stated in writing the basis for the determination and a state department or county department supervisor has provided written approval of the determination, which basis and approval may be in electronic form.

(II) The rules adopted pursuant to subparagraph (I) of this paragraph (a.5) shall require the notice of investigation to be sent to the parents or legal guardians within seventy-two hours after the determination described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a.5) is made.

(b) If, as a result of an investigation conducted pursuant to rules adopted in accordance with this subsection (4.5), institutional abuse is found to have occurred, the entity that conducted such investigation may:

(I) If the institutional abuse is the result of a single act or occurrence at the facility, request that the owner, operator, or administrator of the facility formulate a plan of remedial action. Such request shall be made within a period established by the state department. Within thirty days of the agency's request, the owner, operator, or administrator of the facility shall notify the agency, in writing, of a plan for remedial action. Within ninety days of the request, the owner, operator, or administrator shall complete the plan for remedial action.

(II) If the institutional abuse is one of several similar incidents that have occurred at the facility, request that the owner, operator, or administrator of the facility make administrative, personnel, or structural changes at the facility. Such request shall be made within a period established by the state department. Within thirty days of such request, the owner, operator, or administrator of the facility shall notify the agency of the progress in complying with the request. The agency and the owner, operator, or administrator shall establish the period in which the requested changes shall be completed.

(III) If an owner, operator, or administrator of a facility does not formulate or implement a plan for remedial action in accordance with subparagraph (I) of this paragraph (b) or make requested changes in accordance with subparagraph (II) of this paragraph (b), recommend to the entity that licenses, oversees, certifies, or authorizes the operation of the facility that appropriate sanctions or actions be imposed against the facility.

(c) A teacher, employee, volunteer, or staff person of an institution who is alleged to have committed an act of child abuse shall be temporarily suspended from his position at the institution with pay, or reassigned to other duties which would remove the risk of harm to the child victim or other children under such person's custody or control, if there is reasonable cause to believe that the life or health of the victim or other children at the institution is in imminent danger due to continued contact between the alleged perpetrator and a child at the institution. A public employee suspended pursuant to this paragraph (c) shall be accorded and may exercise due process rights, including notice of the proposed suspension and an opportunity to be heard, and any other due process rights provided under the laws of this state governing public employment and under any applicable individual or group contractual agreement. A private employee suspended pursuant to this subsection (4.5) shall be accorded and may exercise due process rights provided for under the laws of this state governing private employment and under any applicable individual or group employee contractual agreement.

(d) Nothing in this subsection (4.5) shall be construed to abrogate or limit any other enforcement action provided by law.

(5) If a local law enforcement agency receives a report of a known or suspected incident of intrafamilial abuse or neglect, it shall forthwith attempt to contact the county department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the county department, it shall forthwith make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care. As a part of an investigation pursuant to this subsection (5), the local law enforcement agency shall have access to the records and reports of child abuse or neglect maintained by the state department for information under the name of the child or the suspected perpetrator. The local law enforcement agency, upon the receipt of a report and upon completion of any investigation it may undertake, shall forthwith forward a summary of the investigatory data plus all relevant documents to the county department.

(5.3) (a) Local law enforcement agencies shall have the responsibility for the coordination and investigation of all reports of third-party abuse or neglect by persons ten years of age or older. Upon receipt of a report, if the local law enforcement agency reasonably believes that the protection and safety of a child is at risk due to an act or omission on the part of persons responsible for the child's care, such agency shall notify the county department of social services for an assessment regarding neglect or dependency. In addition, the local law enforcement agency shall refer to the county department of social services any report of third-party abuse or neglect in which the person allegedly responsible for such abuse or neglect is under age ten. Upon the completion of an investigation, the local law enforcement agency shall forward a copy of its investigative report to the county department of social services. The county department shall review the law enforcement investigative report and shall determine whether the report contains information that constitutes a case of confirmed child abuse and requires it to be submitted to the state department, which report, upon such determination, shall be submitted to the state department in the manner prescribed by the state department within sixty days after the receipt of the report by the county department.

(b) If, before an investigation is completed, the local law enforcement agency determines that social services are necessary for the child and, if applicable, the child's family or that assistance from the county department of social services is otherwise required, the agency may request said services or assistance from the county department. The county department shall immediately respond to a law enforcement agency's request for services or assistance in a manner deemed appropriate by the county department.

(c) When the investigation involves a suspected perpetrator who was acting in his official capacity as an employee of a school district, the local law enforcement agency shall coordinate such investigation with any concurrent abuse investigation being conducted by the department of education or the school district to the extent such coordination is possible and deemed appropriate.

(5.5) Upon the receipt of a report, if the county department reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the local law enforcement agency responsible for investigation of violations of criminal child abuse laws. The local law enforcement agency may conduct an investigation to determine if a violation of any criminal child abuse law has occurred. It is the general assembly's intent that, in each county of the state, law enforcement agencies and the respective county departments of social services shall develop and implement cooperative agreements to coordinate duties of both agencies in connection with the investigation of all child abuse or neglect cases and that the focus of such agreements shall be to ensure the best protection for the child. The said agreements shall provide for special requests by one agency for assistance from the other agency and for joint investigations by both agencies.

(5.7) Upon initial investigation of a report alleging abuse or neglect in which the suspected perpetrator was acting in his official capacity as an employee of a school district, if the county department or the local law enforcement agency reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the superintendent of the school district who shall consider such report to be confidential information; except that the superintendent shall notify the department of education of such investigation.

(6) (a) It is the intent of the general assembly to encourage the creation of one or more child protection teams in each county or contiguous group of counties. A child protection team may be consolidated with other local advisory boards pursuant to section 24-1.7-103, C.R.S. In each county in which reports of fifty or more incidents of known or suspected child abuse have been made to the county department or the local law enforcement agency in any one year, the county director shall cause a child protection team to be inaugurated in the next following year.

(b) The child protection team shall review the investigatory reports of the case, which shall include the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

(c) At each meeting, each member of the child protection team shall be provided with the investigatory reports on each case to be considered.

(d) and (e) (Deleted by amendment, L. 91, p. 223, § 4, effective May 24, 1991.)

(f) Immediately after any executive session at which a child abuse or neglect case is discussed, the child protection team shall publicly review the responses of public and private agencies to each reported incident of child abuse or neglect, shall publicly state whether such responses were timely, adequate, and in compliance with the provisions of this part 3, and shall publicly report nonidentifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(g) After this mandatory public discussion of agency responses, the child protection team shall go into executive session upon the vote of a majority of the team members to consider identifying details of the case being discussed, to discuss confidential reports, including but not limited to the reports of physicians, including psychiatrists, or, when the members of the team desire, to act as an advisory body concerning the details of treatment or evaluation programs. The team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive session shall be discussed and formulated at the immediately succeeding public session of the team, without publicly revealing identifying details of the case.

(h) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall publicly report whether there were any lapses and inadequacies in the child protection system and if they have been corrected.

(i) The team shall make a report of its recommendations to the county department with suggestions for further action or stating that the team has no recommendations or suggestions. Contiguous counties may cooperate in meeting the requirements of this subsection (6).

(7) Each member of the team shall be appointed by the agency he represents, and each team member shall serve at the pleasure of the appointing agency; except that the county director shall appoint the representatives of the lay community, including the representatives of any ethnic, racial, or linguistic minority, and shall actively recruit all interested individuals and consider their applications for appointment as lay-community representatives on the team.

(8) The county director or his designee shall be deemed to be the local coordinator of the child protection team. In those counties in which child protection teams meeting the requirements of this part 3 are currently functioning, they shall be recognized, with the consent of all members, as the functioning child protection team for that county.

(9) The child protection team shall meet no later than one week after receipt of a report to evaluate such report of child abuse.

(10) In the event that the local department initiates a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of the child who is the subject of a report, the department shall notify, in writing, the guardian ad litem appointed by the court under section 19-3-312 to represent the child's interest. Such notice shall include:

(a) The reason for initiating the petition;

(b) Suggestions as to the optimum disposition of this particular case; and

(c) Suggested therapeutic treatment and social services available within the community for the subject child and the responsible person.

(11) Upon a finding that a report contains information that constitutes a case of confirmed child abuse or neglect that requires it to be submitted to the state department, the

person who is found to be responsible for the abuse or neglect of a child in the confirmed report shall be given timely notice of this finding and of the right to appeal pursuant to rules established by the state board pursuant to section 19-3-313.5 (3).

Source: L. 87: Entire title R&RE, p. 767, § 1, effective October 1. **L. 88:** (5.5) added, p. 744, § 13, effective July 1. **L. 90:** (4)(a) amended and (5.7) added, p. 1023, § 2, effective July 1. **L. 91:** (1), (3)(a), (4), (5), (5.5), (6), (9), and (10) amended and (4.5) and (5.3) added, p. 223, § 4, effective May 24; (4)(b) amended, p. 1912, § 22, effective June 1. **L. 93:** (1)(b) amended, p. 1169, § 1, effective June 3; (1)(a) amended, p. 1169, § 1, effective January 1, 1994. **L. 96:** (4)(a) amended, p. 84, § 9, effective March 20. **L. 97:** (2) amended, p. 1438, § 12, effective July 1; (6)(a) amended, p. 1191, § 15, effective July 1. **L. 99:** (1.5) added, p. 1076, § 2, effective May 29. **L. 2001:** (5.3)(a) amended, p. 854, § 2, effective July 1. **L. 2003:** (4)(a), (5), and (5.3)(a) amended and (11) added, p. 1406, § 11, effective January 1, 2004. **L. 2004:** (4.5)(a.5) added, p. 1758, § 1, effective June 4; (1)(b) repealed, p. 194, § 9, effective August 4. **L. 2005:** (1)(c) added, p. 588, § 3, effective July 1. **L. 2010:** (1.5)(c) added, (HB 10-1226), ch. 129, p. 425, § 2, effective April 15; (1.5)(b) amended, (SB 10-175), ch. 188, p. 791, § 42, effective April 29.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (4) in House Bill 91-1002 and Senate Bill 91-243 were harmonized.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (4)(a), (5), and (5.3)(a) and enacting subsection (11) see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration in the 2010 act adding subsection (1.5)(c), see section 1 of chapter 129, Session Laws of Colorado 2010.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A violation of state law duty, by itself, is insufficient to give rise to a claim under 42 U.S.C. § 1983. Plaintiffs could not maintain a substantive due process claim based on defendants' alleged violations of their duties under the Child Protection Act to report and investigate allegations of child abuse. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp.2d 1139 (D. Colo. 2000).

Defendants' alleged failure to report and investigate child abuse allegations does not deprive plaintiffs of a protected liberty interest without due process of law. While plaintiffs may have had an expectation that some form of protective services would be taken if defendants complied with the statutory requirements, the expectation of action is not enough to create a protected liberty interest under the due process clause of the U.S. Constitution. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp.2d 1139 (D. Colo. 2000).

The child protection team is subject to the provisions of the public meetings law, § 29-9-101, since it is a committee of a political subdivision of the state. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Coverage of article's confidentiality provision. The confidentiality provision of this article covers the entire contents of a child abuse report and the records related thereto. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Matters to be handled in open meetings. Discussion of matters not contained in reports, and which do not pertain to identifying information, are not appropriate subjects for executive session. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

The child protection team's consideration of questions other than those on specific cases, such as agency availability and responsiveness to reports of child abuse, must be handled in meetings open to the public. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Applied in People v. Beruman, 638 P.2d 789 (Colo. 1982).

19-3-308.3. Differential response pilot program for child abuse or neglect cases of low or moderate risk - rules - reports - evaluation - repeal. (1) (a) There is hereby created the differential response pilot program, referred to in this section as the "pilot program", to allow selected county departments, on and after April 15, 2010, to address

known or suspected incidents of intrafamilial abuse or neglect that have been assessed, pursuant to rule of the state board, to be of low or moderate risk. The executive director of the state department shall select the county departments that participate in the pilot program, which county departments are referred to in this section as the "participating county departments".

(b) The state department is authorized to solicit, accept, and expend gifts, grants, and donations for the implementation and administration of the pilot program.

(2) Participation in the pilot program by families who are referred to the pilot program shall be voluntary.

(3) For each family who is referred to the pilot program, neither the state department nor a county department shall be required to make a finding concerning the alleged intrafamilial abuse or neglect in the family.

(4) The state department and the participating county departments shall administer the pilot program in accordance with such rules as may be promulgated by the state board pursuant to subsection (6) of this section.

(5) To the extent permitted by law and by such rules as may be promulgated by the state board pursuant to subsection (6) of this section, the participating county departments, in administering the pilot program, shall cooperate with local community service organizations in addressing known or suspected incidents of intrafamilial abuse or neglect.

(6) The state board shall promulgate rules to define and implement differential response and for the administration of the pilot program.

(7) On or before November 1, 2014, each participating county department shall prepare and submit to the state department a report concerning the participating county department's administration of the pilot program.

(8) On or before January 1, 2015, the state department shall prepare and submit to the health and human services committees of the house of representatives and senate, or any successor committees, a report concerning the administration of the pilot program since April 15, 2010. The report, at a minimum, shall include:

(a) An evaluation of the pilot program's success or failure, which evaluation shall include, but need not be limited to, consideration of the pilot program's effectiveness in achieving the following outcomes:

(I) Child safety and permanency;

(II) Family and caseworker satisfaction; and

(III) Cost effectiveness.

(b) A description of any specific problems that the state department or participating county departments encountered during their administration of the pilot program, including any recommendations that the state department may have for legislation to address such problems.

(c) A recommendation by the state department as to whether the general assembly should repeal the pilot program, continue the pilot program for a specific period, or establish the pilot program statewide on a permanent basis.

(9) This section is repealed, effective July 1, 2015.

Source: L. 2010: Entire section added, (HB 10-1226), ch. 129, p. 425, § 3, effective April 15. **L. 2012:** (1)(a), (6), and (7) amended, (SB 12-011), ch. 55, p. 202, § 1, effective March 24.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 129, Session Laws of Colorado 2010.

19-3-308.5. Recorded interviews of child. (1) (a) Any interview of a child conducted pursuant to section 19-3-308, concerning a report of child abuse, may be audiotaped or videotaped. However, interviews concerning reports of sexual child abuse are strongly encouraged to be videotaped. Any audiotaped or videotaped interview shall be conducted by a competent interviewer at a child advocacy center, as that term is defined in section 19-1-103 (19.5), that has a memorandum of understanding with the agency responsible for the investigation or by a competent interviewer for the agency responsible for the inves-

tigation in accordance with such section; except that an interview shall not be videotaped when doing so is impracticable under the circumstances or will result in trauma to the child, as determined by the investigating agency. No more than one videotaped interview shall be required unless the interviewer or the investigating agency determines that additional interviews are necessary to complete an investigation. Additional interviews shall be conducted, to the extent possible, by the same interviewer. Such recordings shall be preserved as evidence in the manner and for a period provided by law for maintaining such evidence. In addition, access to such recordings shall be subject to the rules of discovery under the Colorado rules of criminal and civil procedure.

(b) (Deleted by amendment, L. 93, p. 1169, § 2, effective January 1, 1994.)

(c) The provisions of this subsection (1) shall not apply to a videotaped deposition taken in accordance with and governed by section 18-3-413, C.R.S., or section 13-25-132, C.R.S., and rule 15 (d) of the Colorado rules of criminal procedure. In addition, this section shall not apply to interviews of the child conducted after a dependency and neglect action or a criminal action has been filed with the court.

(d) (Deleted by amendment, L. 93, p. 1169, § 2, effective January 1, 1994.)

(e) (I) Any agency subject to the provisions of this section shall provide equipment necessary to videotape or audiotape the interviews or shall enter into a memorandum of understanding with a child advocacy center authorizing the use of such equipment. The investigating agency shall train persons responsible for conducting videotaped interviews in accordance with this section; except that the agency shall not be responsible for training interviewers employed by a child advocacy center. The agency shall adopt standards for persons conducting such interviews.

(II) Repealed.

(f) An agency that enters into a memorandum of understanding with a child advocacy center that employs interviewers shall assure that such interviewers meet the training standards for persons conducting interviews adopted by the agency pursuant to paragraph (e) of this subsection (1). In addition, an agency that enters into a memorandum of understanding with a child advocacy center that provides technical assistance for forensic interviews, forensic medical examinations, or evidence collection or preservation may require that the child advocacy center meets the national performance standards for children's advocacy centers as established by the national accrediting body. These standards include, but are not limited to, standards for forensic interviews to be conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

Source: L. 91: Entire section added, p. 229, § 5, effective May 24. **L. 93:** Entire section amended, p. 1169, § 2, effective January 1, 1994. **L. 2004:** (1)(a) and (1)(e) amended and (1)(f) added, p. 806, § 1, effective May 21; (1)(e)(II) repealed, p. 194, § 10, effective August 4.

Editor's note: Amendments to subsection (1)(e) by House Bill 04-1061 and Senate Bill 04-067 were harmonized.

19-3-309. Immunity from liability - persons reporting. Any person, other than the perpetrator, complicitor, coconspirator, or accessory, participating in good faith in the making of a report, in the facilitation of the investigation of such a report, or in a judicial proceeding held pursuant to this title, the taking of photographs or X rays, or the placing in temporary protective custody of a child pursuant to section 19-3-405 or otherwise performing his duties or acting pursuant to this part 3 shall be immune from any liability, civil or criminal, or termination of employment that otherwise might result by reason of such acts of participation, unless a court of competent jurisdiction determines that such person's behavior was willful, wanton, and malicious. For the purpose of any proceedings, civil or criminal, the good faith of any such person reporting child abuse, any such person taking photographs or X rays, and any such person who has legal authority to place a child in protective custody shall be presumed.

Source: L. 87: Entire title R&RE, p. 770, § 1, effective October 1. **L. 89:** Entire section amended, p. 916, § 7, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Claims of negligence not alleging bad faith are not sustainable against this person immunized by this section if good faith is alleged by such person. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Section does not provide immunity for actions not arising out of statutory duty to report suspected child abuse, including negligence and negligent infliction of emotional distress. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Statutory presumption of good faith insufficient to support summary judgment when the plaintiffs in their pleading and affidavits assert facts which, if true, would rebut the presumption. Martin v. County of Weld, 43 Colo. App. 49, 598 P.2d 532 (1979); Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Rebutting the "good-faith"exception. To rebut a statutory presumption of good faith, both a subjective and objective component must be satisfied. The subjective component requires evidence of evil motive, and the objective component requires evidence that the person acting in good faith did not have any factual basis to believe that activities had been performed that would require him or her to make a report pursuant to § 19-3-304 (1). Credit Serv. Co. v. Dauwe, 134 P.3d 444 (Colo. App. 2005).

Although this section immunizes a person "participating in good faith in the making of a report ... or otherwise performing his duties or acting pursuant to this article", the mere declaration of good faith by an affiant is not sufficient to resolve that issue in the face of a pleaded denial precluding summary judgment. Martin v. County of Weld, 43 Colo. App. 49, 598 P.2d 532 (1979).

Immunity extends to employer of employee making report if immunity is properly granted for employee's actions. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

The grant of immunity provided by this section does not extend to new acts of exploitation admitted to by the defendant. People v. Atencio, 780 P.2d 46 (Colo. App. 1989).

Applied in People v. Beruman, 638 P.2d 789 (Colo. 1982); Griffin v. Pate, 644 P.2d 51 (Colo. App. 1981).

19-3-309.5. Preconfirmation safety plan agreement - first-time minor incidents of child abuse or neglect - rules. (1) The county department and any person who is believed to be responsible for the abuse or neglect of a child as a result of an investigation of a report of child abuse or neglect pursuant to section 19-3-308 may agree to defer the filing of a confirmed report of child abuse or neglect with the state department as required by section 19-3-307 and enter into a safety plan agreement when the following circumstances exist:

(a) The person who is believed to be responsible for the child abuse or neglect has had no previous allegation of child abuse or neglect investigated;

(b) The child abuse or neglect that the person is believed to be responsible for is at the level of a minor incident of abuse or neglect, as defined by rule of the state board;

(c) The person who is believed to be responsible for the minor incident of child abuse or neglect and the county department decide on a mutually agreeable method for resolving the issues related to the report; and

(d) The requirements set forth in the safety plan agreement for resolving the issues related to the report can be completed within sixty days after the report of child abuse or neglect is made to the county department or the local law enforcement agency.

(2) (a) If a person who is believed to be responsible for the child abuse or neglect completes the mutually agreed upon safety plan agreement entered into pursuant to subsection (1) of this section, then the county department shall release him or her from the terms of the agreement and shall not file a confirmed report of child abuse or neglect related to the incident with the state department.

(b) If a person who is believed to be responsible for the child abuse or neglect does not complete the mutually agreed upon safety plan agreement entered into pursuant to subsection (1) of this section, as determined by the county department, then the county department shall file a confirmed report of child abuse or neglect with the state department.

(c) Nothing in this section shall be construed to eliminate a county department's

obligation to report to the state department that there was an investigation of a report of abuse or neglect of a child and to further report the county department's assessment of risk, the county department's decision regarding a referral of the matter to child welfare services, and any county department decision to defer the filing of a confirmed report of child abuse or neglect pursuant to this section.

(3) Participation in a safety plan agreement by any county department and by any person who is believed to be responsible for child abuse or neglect shall be at the discretion of the person believed to be responsible for the child abuse or neglect. Nothing in this section shall be construed to confer a right upon a person who is believed to be responsible for the abuse or neglect of a child to enter into a safety plan agreement or to require a county department to enter into a safety plan agreement with a person who is believed to be responsible for the abuse or neglect of a child.

(4) Nothing in this section shall be construed to obligate a county department to expend moneys to provide services to persons for the purpose of entering into a safety plan agreement pursuant to this section.

(5) For purposes of this section, "safety plan agreement" means an agreement between the county department and the person who is believed to be responsible for the abuse or neglect of a child, developed pursuant to this section after a safety assessment is completed by the county department that identifies conditions that will endanger the child, in order to fully address all obvious safety concerns identified in the safety assessment.

(6) The state board shall promulgate rules to implement this section.

(7) An agreement to enter into a safety plan agreement pursuant to this section shall not negate a person's right to appeal a later finding of child abuse or neglect.

Source: L. 2004: Entire section added, p. 580, § 1, effective July 1.

19-3-310. Child abuse and child neglect diversion program. (1) The district attorney, upon recommendation of the county department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a nonjudicial source of treatment or assistance, upon conditions set forth by the county department and the district attorney. If a person is so diverted from the criminal justice system, the district attorney shall not file charges in connection with the case if the person participates to the satisfaction of the county department and the district attorney in the diversion program offered.

(2) The initial diversion shall be for a period not to exceed two years. This diversion period may be extended for one additional one-year period by the district attorney if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the district attorney and the county department.

(3) If the person diverted successfully completes the diversion program to the satisfaction of the county department and the district attorney, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

(4) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-310.5. Mediation - pilot program. (Repealed)

Source: L. 94: Entire section added, p. 1742, § 1, effective July 1. **L. 95:** (5) amended, p. 516, § 10, effective July 1. **L. 98:** (10) repealed, p. 732, § 23, effective May 18.

Editor's note: Subsection (11) provided for the repeal of this section, effective July 1, 1999. (See L. 94, p. 1742.)

19-3-311. Evidence not privileged. (1) The incident of privileged communication between patient and physician, between patient and registered professional nurse, or between any person licensed pursuant to article 43 of title 12, C.R.S., or certified or licensed school psychologist and client, which is the basis for a report pursuant to section 19-3-304, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3. In addition, privileged communication shall not apply to any discussion of any future misconduct or of any other past misconduct which could be the basis for any other report under section 19-3-304.

(2) The privileged communication between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 89:** Entire section amended, p. 699, § 6, effective June 7. **L. 90:** Entire section amended, p. 1024, § 3, effective July 1. **L. 2008:** (1) amended, p. 1893, § 65, effective August 5.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-10-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Marital privilege inapplicable. The marital privilege cannot be invoked to exclude a spouse's testimony in a case involving child abuse. People v. Corbett, 656 P.2d 687 (Colo. 1983).

Prior to 1989 amendment, plain language of this section did not abolish psychologist-patient privilege for communications between social worker and client concerning child abuse or neglect. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Psychologist-patient privilege was not abrogated under this section where the provisions of this section do not concern communications relating to ongoing treatment of the victim and where the privilege is abrogated only with respect to information that is the basis for a report of suspected child abuse under § 19-3-304. People v. Dill, 904 P.2d 1367 (Colo. App. 1995), aff'd, 927 P.2d 1315 (Colo. 1996).

Testimony of psychologist concerning report of alleged child abuse filed with law enforcement was not a waiver of the psychologist-patient privilege because this section abrogates that privilege. Dill v. People, 927 P.2d 1315 (Colo. 1996).

19-3-312. Court proceedings. (1) The county department or local law enforcement agency receiving a report under section 19-3-304 or 19-3-305, in addition to taking such immediate steps pursuant to sections 19-3-401 and 19-3-308 (4) as may be required to protect a child, shall inform, within seventy-two hours, the appropriate juvenile court or district court with juvenile jurisdiction that the child appears to be within the court's jurisdiction. Upon receipt of such information, the court shall make an immediate investigation to determine whether protection of the child from further abuse is required and, upon such determination, may authorize the filing of a petition, as provided for in section 19-3-501 (2).

(2) In any proceeding initiated pursuant to this section, the court shall name as respondents all persons alleged by the petition to have caused or permitted the abuse or neglect alleged in the petition. In every such case, the responsible person shall be named as respondent. Summonses shall be issued for all named respondents in accordance with section 19-3-503.

(3) If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the court against the

respondent. If the prayer of the petition is not granted, the costs may be charged against the state of Colorado.

(4) If a report under section 19-3-304 or 19-3-305 is based solely on an allegation of emotional abuse as defined in section 19-1-103 (1) (a), if requested by any party to the proceeding or upon its own motion, the court shall order a report to be prepared by an independent mental health care provider. The independent mental health care provider shall interview the child and the alleged perpetrator of the abuse. The costs of the report shall be split equally between the county and the party requesting the report, unless the court finds that paying such costs would cause a hardship to the party.

(5) If a petition is filed alleging that a child is neglected or dependent based upon section 19-3-102 (2), the county department shall engage in concurrent planning to expedite the permanency planning process for the child who is the subject of such petition.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 97:** (4) and (5) added, p. 1439, § 13, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986).

The state must show that the condition resulting from the alleged abuse is not justifiably explained in an action to declare children dependent or neglected. In re People in Interest of R.K., 31 Colo. App. 459, 505 P.2d 37 (1972) (decided under former § 19-10-108 as it existed prior to the 1975 repeal and reenactment of this article).

19-3-313. Central registry. (Repealed)

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 91:** (3) to (7) amended and (14) added, p. 230, § 6, effective May 24. **L. 96:** (14) amended, p. 1586, § 12, effective July 1; (4), (5), and (7) amended and (5.5) added, p. 1287, § 2, effective January 1, 1997; (6)(b), (7)(b)(III), and (14) amended, p. 1173, § 9, effective January 1, 1997. **L. 99:** (5.5)(a) and (5.5)(b)(I) amended and (5.5)(b)(III) added, p. 1026, § 11, effective May 29; (5.5)(a) and (5.5)(b)(I) amended and (5.5)(b)(III) added, p. 1207, § 11, effective June 2. **L. 2000:** (1), (2)(e), (5), (5.5)(c), (7)(c)(I)(A), (7)(c)(I)(B), and (7)(c)(II) amended and (2)(f) and (7)(d) added, pp. 1720, 1721, §§ 1, 2, 3, effective June 1. **L. 2001:** (7)(b)(I), (7)(c), and (7)(d) amended and (7)(e) added, p. 854, § 3, effective July 1. **L. 2002:** (10) amended, p. 1527, § 232, effective October 1. **L. 2003:** (8) amended, p. 1622, § 37, effective August 6; entire section repealed, p. 1398, § 2, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 196, Session Laws of Colorado 2003.

19-3-313.5. State department duties - reports of child abuse or neglect - training of county departments - rules - notice and appeal process - confidentiality. (1) **Legislative declaration.** As a result of the report of the state auditor evaluating the performance of the state central registry of child protection released in November of 2001 and the subsequent repeal of the state central registry of child protection, the general assembly hereby finds and declares that it is in the best interests of the children and the citizens of the state of Colorado for the state department to modify the processing of records and reports

of child abuse or neglect. These modifications are intended to ensure that the state department is able to provide reliable, accurate, and timely information concerning records and reports of child abuse or neglect. In addition, these modifications are intended to ensure compliance with federal law regarding the prompt expungement of any records or reports that are used for purposes of employment checks or other background checks in cases determined to be unsubstantiated or false, while allowing the state department to maintain such records and reports in case files for the purpose of assisting in determinations of future risk and safety assessments. Finally, these modifications are intended to ensure that the state department's procedural systems related to records and reports of child abuse or neglect provide adequate protection to the children and the citizens of the state of Colorado.

(2) **Training of county departments.** On or before January 1, 2004, the state department shall modify the training provided to county departments to achieve consistency and standardization in the performance of the following duties:

(a) Investigating reports of child abuse or neglect;

(b) Reporting confirmed incidents of child abuse or neglect to the state department;

(c) Preparing documents related to records and reports of child abuse or neglect;

(d) Entering data into computer systems maintaining information related to records and reports of child abuse or neglect; and

(e) Maintaining confidentiality in accordance with federal and state law.

(3) **Notice and appeals process - rules.** On or before January 1, 2004, the state board, in consideration of input and recommendations from the county departments, shall promulgate rules to establish a process at the state level by which a person who is found to be responsible in a confirmed report of child abuse or neglect filed with the state department pursuant to section 19-3-307 may appeal the finding of a confirmed report of child abuse or neglect to the state department. At a minimum, the rules established pursuant to this subsection (3) shall address the following matters, consistent with federal law:

(a) The provision of adequate and timely written notice by the county departments of social services or, for an investigation pursuant to section 19-3-308 (4.5), by the agency that contracts with the state, using a form created by the state department, to a person found to be responsible in a confirmed report of child abuse or neglect of the person's right to appeal the finding of a confirmed report of child abuse or neglect to the state department;

(b) The timeline and method for appealing the finding of a confirmed report of child abuse or neglect;

(c) Designation of the entity, which entity shall be one other than a county department of social services, with the authority to accept and respond to an appeal by a person found to be responsible in a confirmed report of child abuse or neglect at each stage of the appellate process;

(d) The legal standards involved in the appellate process and a designation of the party who bears the burden of establishing that each standard is met;

(e) The confidentiality requirements of the appeals process; and

(f) Provisions requiring, and procedures in place that facilitate, the prompt expungement of and prevent the release of any information contained in any records and reports that are accessible to the general public or are used for purposes of employment or background checks in cases determined to be unsubstantiated or false; except that, the state department and the county departments of social services may maintain information concerning unsubstantiated reports in casework files to assist in future risk and safety assessments.

(4) **Confidentiality - rules.** On or before January 1, 2004, the state board shall promulgate rules to establish guidelines for the release of information contained in records and reports of child abuse or neglect for screening purposes to assure compliance with sections 19-1-303 and 19-1-307 and any other state or federal law relating to confidentiality of records and reports of child abuse or neglect. Rules promulgated by the state board shall address the following:

(a) How a request for information is to be processed;

(b) Who may be granted access to information;

(c) What information in the records and reports is to be made available to the person or entity granted access;

(d) The purposes for which information contained in the records and reports may be made available to the person or entity granted access; and

(e) The consequences of improper release of information related to records and reports of child abuse or neglect.

Source: L. 2003: Entire section added, p. 1398, § 3, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act enacting this section, see section 1 of chapter 196, Session Laws of Colorado 2003.

19-3-314. Confidentiality of records. (Repealed)

Source: L. 87: Entire title R&RE, p. 773, § 1, effective October 1. **L. 90:** (2)(j) and (2)(k)(I) amended, p. 1392, § 8, effective May 4; entire section repealed, p. 1012, § 8, effective July 1.

Editor's note: Subsections (2)(j) and (2)(k)(I) were amended in House Bill 90-1075. Those amendments were superseded by the repeal of the entire section in Senate Bill 90-61. Identical provisions were located in section 19-1-120 (2)(j) and (2)(k) until it was repealed in 1994. These provisions are now located in section 19-1-307 (2)(j) and (2)(k).

19-3-315. Federal funds. The department of human services is authorized to accept federal funds such as child abuse and neglect state grants which are available for the implementation of programs which would further the purposes of this part 3.

Source: L. 87: Entire title R&RE, p. 775, § 1, effective October 1. **L. 94:** Entire section amended, p. 2683, § 200, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-316. Protection orders and emergency protection orders. (Repealed)

Source: L. 88: Entire section added, p. 744, § 14, effective July 1. **L. 94:** (1)(a), (2)(b), (2)(f), and (3) amended and (5) added, p. 2015, § 10, effective January 1, 1995. **L. 2002:** (1)(d) amended, p. 1144, § 2, effective July 1. **L. 2003:** (1)(a) and (5) amended, p. 1015, § 25, effective July 1. **L. 2004:** Entire section repealed, p. 554, § 5, effective July 1.

PART 4

TEMPORARY CUSTODY AND SHELTER

19-3-401. Taking children into custody. (1) A child may be taken into temporary custody by a law enforcement officer without order of the court:

(a) When the child is abandoned, lost, or seriously endangered in such child's surroundings or seriously endangers others and immediate removal appears to be necessary for such child's protection or the protection of others;

(b) When there are reasonable grounds to believe that such child has run away or escaped from such child's parents, guardian, or legal custodian and the child's parents, guardian, or legal custodian has not made a report to a law enforcement agency that the child has run away from home; or

(c) When an arrest warrant has been issued for such child's parent or guardian on the basis of an alleged violation of section 18-3-304, C.R.S. No child taken into temporary custody pursuant to this paragraph (c) shall be placed in detention or jail.

(1.3) A child shall be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe the child has run away from the child's parents, guardian, or legal custodian and the child's parents, guardian, or legal custodian has made a report to a law enforcement agency that the child has run away from home.

(1.5) An emergency exists and a child is seriously endangered as described in paragraph (a) of subsection (1) of this section whenever the safety or well-being of a child is immediately at issue and there is no other reasonable way to protect the child without removing the child from the child's home. If such an emergency exists, a child shall be removed from such child's home and placed in protective custody regardless of whether reasonable efforts to preserve the family have been made.

(2) The taking of a child into temporary custody under this section shall not be deemed an arrest, nor shall it constitute a police record.

(3) (a) Notwithstanding the provisions of subsections (1) and (1.5) of this section and except as otherwise provided in paragraphs (b) and (c) of this subsection (3), a newborn child, as defined in section 19-1-103 (78.5), who is not in a hospital setting shall not be taken into temporary protective custody for a period of longer than twenty-four hours without an order of the court made pursuant to section 19-3-405 (1), which order includes findings that an emergency situation exists and that the newborn child is seriously endangered as described in paragraph (a) of subsection (1) of this section.

(b) A newborn child, as defined in section 19-1-103 (78.5), who is in a hospital setting shall not be taken into temporary protective custody without an order of the court made pursuant to section 19-3-405 (1), which order includes findings that an emergency situation exists and that the newborn child is seriously endangered as described in paragraph (a) of subsection (1) of this section. A newborn child may be detained in a hospital by a law enforcement officer upon the recommendation of a county department of social services, a physician, a registered nurse, a licensed practical nurse, or a physician's assistant while an order of the court pursuant to section 19-3-405 (1) is being pursued, but the newborn child must be released if a court order pursuant to section 19-3-405 (1) is denied.

(c) The court orders required by paragraphs (a) and (b) of this subsection (3) shall not be required in the following circumstances:

(I) When a newborn child is identified by a physician, registered nurse, licensed practical nurse, or physician's assistant engaged in the admission, care, or treatment of patients as being affected by substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure;

(II) When the newborn child's only identifiable birth parent has been determined by a physician, registered nurse, or qualified mental health professional to meet the criteria specified in section 27-65-105, C.R.S., for custody, treatment, and evaluation of mental illness or grave disability;

(III) When both of the newborn child's birth parents have been determined by a physician, registered nurse, or qualified mental health professional to meet the criteria specified in section 27-65-105, C.R.S., for custody, treatment, and evaluation of mental illness or grave disability; or

(IV) When the newborn child is subject to an environment exposing the newborn child to a laboratory for manufacturing controlled substances as defined in section 18-18-102 (5), C.R.S.

(d) At the time a law enforcement officer takes a newborn child into temporary protective custody, the law enforcement officer shall provide the notices required by sections 19-3-402 and 19-3-212 directly to the newborn child's identifiable birth parent or parents in both verbal and written form. Such notices may be provided to the child's identifiable birth parent or parents in a language that the birth parent or parents understand, and the law enforcement officer may designate another person to assist him or her in providing such written and verbal notices to fulfill this requirement, if necessary.

(e) If a newborn child is taken into temporary protective custody pursuant to this subsection (3), the county department may contact the child's identifiable birth parent or parents to obtain the names of any relatives or other persons in the parent's or parents' community who may be appropriate, capable, and willing to care for the newborn child

prior to the hearing required by section 19-3-403. In addition, if the identifiable parent or parents are not citizens of the United States, the county department may request the parent's or parents' consent to notify the parent's or parents' government of origin of the situation and, if consent is given, may contact the parent's or parents' government of origin.

Source: L. 87: Entire title R&RE, p. 775, § 1, effective October 1. **L. 93:** Entire section amended, p. 1016, § 5, effective July 1. **L. 2004:** (3) added, p. 429, § 2, effective July 1. **L. 2006:** (1)(b) amended and (1.3) added, p. 337, § 1, effective April 5. **L. 2010:** (3)(c)(II) and (3)(c)(III) amended, (SB 10-175), ch. 188, p. 791, § 43, effective April 29.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2004 act enacting subsection (3), see section 1 of chapter 140, Session Laws of Colorado 2004.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Officer justified in making warrantless entry to secure safety of infant when mother had stopped officer on patrol asking him to help "get my baby back" after it had been seized by father "who had been drinking" and where father refused to allow officer into apartment to check on crying infant. People v. Malczewski, 744 P.2d 62 (Colo. 1987).

19-3-402. Duty of officer - notification - release or detention. (1) When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed out of the child's home, all parties have a right to a prompt hearing to determine whether the child is to remain out of the child's home for a further period of time. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation officer, detention center counselor, shelter care provider, or common jailor in whose physical custody the child is placed.

(2) (a) The child shall then be released to the care of his or her parents or other responsible adult, unless it is in the child's best interests and necessary for the child's welfare to be placed out of the child's home. In the event the child is placed out of the child's home, if in the best interests of the child, preference may be given to placing the child with the child's grandparent who is appropriate, capable, willing, and available to care for the child. The court may make reasonable orders as conditions of said release and may provide that any violation of such orders shall subject the child or the child's parent, guardian, or legal custodian to contempt sanctions of the court. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) (a) Except as provided in paragraph (b) of this subsection (3), a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or legal custodian.

(b) If he is not released as provided in subsection (2) of this section, he shall be taken directly to the court or to the place of detention, or a temporary holding facility, or a shelter designated by the court without unnecessary delay.

(4) The officer or other person who takes a child to a detention or shelter facility or a temporary holding facility shall notify the court and any agency or persons so designated by the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the court and any agency or person so designated by the court stating the facts which led to the child being taken into custody and the reason why the child was not released.

Source: L. 87: Entire title R&RE, p. 776, § 1, effective October 1. **L. 89:** (1), (3)(b), and (4) amended, p. 928, § 4, effective April 23. **L. 90:** (1) and (2) amended, p. 1034, § 1, effective April 3. **L. 91:** (2) amended, p. 264, § 7, effective May 31. **L. 2003:** (2) amended, p. 2622, § 2, effective June 5.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-403. Temporary custody - hearing - time limits - restriction - rules. (1) A child who must be taken from his home but who does not require physical restriction may be given temporary care with the grandparent of the child, upon the grandparent's request, if in the best interests of the child, in a shelter facility designated by the court or with the county department of social services and shall not be placed in detention. If no appropriate shelter facility exists, the child may be placed in a staff-secure temporary holding facility authorized by the court.

(2) When a child is placed in a shelter facility or a temporary holding facility not operated by the department of human services designated by the court, the law enforcement official taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the county, the person with whom the child has been residing and inform him of the right to a prompt hearing to determine whether the child is to be detained further. The court shall hold such hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays. A child requiring physical restraint may be placed in a juvenile detention facility operated by or under contract with the department of human services for a period of not more than twenty-four hours, including Saturdays, Sundays, and legal holidays.

(3) Repealed.

(3.5) When temporary custody is placed with the county department of social services pursuant to this section or section 19-3-405 or when an emergency protection order is entered pursuant to section 19-3-405, the court shall hold a hearing within seventy-two hours after placement, excluding Saturdays, Sundays, and court holidays, to determine further custody of the child or whether the emergency protection order should continue. Such a hearing need not be held if a hearing has previously been held pursuant to subsection (2) of this section.

(3.6) (a) (I) The office of the state court administrator shall prepare a form affidavit and advisement. The form affidavit and advisement shall be available at each judicial district to each parent attending a temporary custody hearing. The form affidavit and advisement shall:

(A) Advise the parent that he or she is required to provide the requested information fully and completely under penalties of perjury and contempt of court;

(B) Require the parent to list the names, addresses, and telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, every grandparent, aunt, uncle, brother, sister, half-sibling, and first cousin of the child;

(C) Provide a section in which the parent may list the names, addresses, telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, other relatives and kin who have a significant relationship with the child;

(D) Advise the parent that failure to identify these relatives in a timely manner may result in the child being placed permanently outside of the home of the child's relatives, if the child cannot be safely returned to the home of the child's parents;

(E) Advise the parent that the child may risk life-long damage to his or her emotional well-being if the child becomes attached to one caregiver and is later removed from the caregiver's home;

(F) Require the parent to acknowledge that he or she understands the advisements contained in the form; and

(G) Require the parent to sign and date the form.

(II) At the hearing, information may be supplied to the court in the form of written or oral reports, affidavits, testimony, or other relevant information that the court may wish to receive. Any information having probative value may be received by the court, regardless of its admissibility under the Colorado rules of evidence.

(III) The court shall advise the parents of the child that the child may be placed with a relative if, in the court's opinion, such placement is appropriate and in the child's best interests. The court shall order the parents to complete the form affidavit and advisement described in subparagraph (I) of this paragraph (a) no later than seven business days after the date of the hearing or prior to the next hearing on the matter, whichever occurs first. The original completed form shall be filed with the court, and a copy delivered to the county department of human or social services no later than five business days after the date of the hearing. Each parent, the guardian ad litem, and counsel for each parent, if any, shall also receive copies of the completed form. The court may advise each parent of the penalties associated with perjury and contempt of court, if necessary. Each parent may suggest an adult relative or relatives whom he or she believes to be the most appropriate caretaker or caretakers for the child. If appropriate, the child or children shall be consulted regarding suggested relative caretakers. The court shall order each parent to notify every relative who may be an appropriate relative caretaker for the child that failure to come forward in a timely manner may result in the child being placed permanently outside of the home of the child's relatives, if the child is not able to return to the child's home. In addition, the court shall advise each parent that failure to identify these relatives in a timely manner may result in the child being placed permanently outside of the home of the child's relatives.

(IV) The court shall order a county department of human or social services to exercise due diligence to contact all grandparents and other adult relatives within thirty days following the removal of the child and to inform them about placement possibilities for the child, unless the court determines there is good cause not to contact or good cause to delay contacting the child's relatives, including but not limited to family or domestic violence. A county department of human or social services shall provide notice to the relatives that the child has been removed from his or her home; options under federal, state, and local law to participate in the child's care or placement; options that may be lost by failing to respond; and requirements to become a foster parent, and services and supports available to the child placed in a foster home. The county department of human or social services shall advise each appropriate identified relative that the possibility for placement of the child in his or her home may terminate at a future date; request each such relative who is interested in becoming a placement option for the child to come forward at the earliest possible time to seek placement of the child in his or her home and to cooperate with the county department of human or social services to expedite procedures pertaining to the placement of the child in his or her home, if the child cannot be safely returned to the home of the child's parents. The department of human services shall promulgate rules for the implementation of this subparagraph (IV) and subparagraph (III) of this paragraph (a).

(V) The court may consider and give preference to giving temporary custody to a child's relative who is appropriate, capable, willing, and available for care if it is in the best interests of the child and if the court finds that there is no suitable birth or adoptive parent available, with due diligence having been exercised in attempting to locate any such birth or adoptive parent. The court may place or continue custody with the county department of social services if the court is satisfied from the information presented at the hearing that such custody is appropriate and in the child's best interests, or the court may enter such other orders as are appropriate. The court may authorize the county department of social

services with custody of a child to place the child with a relative without the necessity for a hearing if a county department locates an appropriate, capable, and willing relative who is available to care for the child and the guardian ad litem of the child concurs that the placement is in the best interests of the child. If the county department of social services places a child with a relative without a hearing pursuant to the provisions of this subparagraph (V), the county department shall fully inform the court of the details concerning the child's placement on the record at the next hearing. If the court enters an order removing a child from the home or continuing a child in a placement out of the home, the court shall make the findings required pursuant to section 19-1-115 (6), if such findings are warranted by the evidence.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3.6) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3.7) A child who is alleged to be a runaway from a state other than Colorado may be held in a shelter care or other appropriate facility for up to seven days, during which time arrangements shall be made for returning the child to the state of his residence.

(4) (a) If it appears that any child being held in a shelter facility may be developmentally disabled, as provided in article 10.5 of title 27, C.R.S., the court shall refer the child to the nearest community centered board for an eligibility determination. If it appears that any child being held in a shelter facility pursuant to the provisions of this article may have a mental illness, as provided in sections 27-65-105 and 27-65-106, C.R.S., the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health prescreening on the child. The court shall be notified of the contact and may take appropriate action. If a mental health prescreening is requested, it shall be conducted in an appropriate place accessible to the child and the mental health professional. A request for a mental health prescreening shall not extend the time within which a hearing shall be held pursuant to this section. If a hearing has been set but has not yet occurred, the mental health prescreening shall be conducted prior to the hearing; except that the prescreening shall not extend the time within which a hearing shall be held pursuant to this section.

(b) If a child has been ordered detained pending an adjudication, disposition, or other court hearing and the child subsequently appears to have a mental illness, as provided in section 27-65-105 or 27-65-106, C.R.S., the intake personnel or other appropriate personnel shall contact the court with a recommendation for a mental health prescreening. A mental health prescreening shall be conducted at any appropriate place accessible to the child and the mental health professional within twenty-four hours of the request, excluding Saturdays, Sundays, and legal holidays.

(c) When the mental health professional finds, as a result of the prescreening, that the child may have a mental illness, the mental health professional shall recommend to the court that the child be evaluated pursuant to section 27-65-105 or 27-65-106, C.R.S., and the court shall proceed as provided in section 19-3-506.

(d) Nothing in this subsection (4) shall be construed to preclude the use of emergency procedures pursuant to section 27-65-105, C.R.S.

(5) The court may, at any time, order the release of any child being held pursuant to section 19-3-401 from shelter care or a temporary holding facility not operated by the department of human services without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the court at a time set or to be set by the court.

(6) (a) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in shelter care or a temporary holding facility not operated by the department of human services.

(b) When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in shelter care or a temporary holding facility not operated by the department of human services, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available.

(7) The court may also issue temporary orders for legal custody as provided in section 19-1-115.

(8) Any law enforcement officer, employee of the division in the department of human services responsible for youth services, or other person acting under the direction of the court who in good faith transports any child, releases any child from custody pursuant to a written policy of a court, releases any child from custody pursuant to any written criteria established pursuant to this title, or detains any child pursuant to court order or written policy or criteria established pursuant to this title shall be immune from civil or criminal liability that might otherwise result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed.

Source: L. 87: Entire title R&RE, p. 776, § 1, effective October 1. **L. 89:** (1), (2), (3)(a), (5), and (6) amended, p. 928, § 5, effective April 23. **L. 90:** (2), (4)(a), (5), and (6) amended, (3) repealed, and (3.5) to (3.7) added, pp. 1035, 1037, §§ 2, 6, effective April 3; (8) added, p. 1019, § 6, effective April 20; (3.5) amended, p. 1033, § 24, effective July 1. **L. 91:** (1) and (3.6) amended, p. 264, § 8, effective May 31. **L. 93:** (3.6) amended, p. 2016, § 6, effective July 1. **L. 94:** (2), (5), (6), and (8) amended, p. 2683, § 201, effective July 1. **L. 97:** (3.5) amended, p. 518, § 6, effective July 1. **L. 2000:** (3.6) amended, p. 1123, § 1, effective August 2. **L. 2001:** (3.6) amended, p. 846, § 8, effective June 1. **L. 2003:** (3.6) amended, p. 2623, § 3, effective June 5. **L. 2005:** (3.6) amended, p. 676, § 2, effective July 1. **L. 2006:** (4) amended, p. 1401, § 57, effective August 7. **L. 2009:** (3.6)(a)(III) and (3.6)(a)(IV) amended, (SB 09-245), ch. 436, p. 2423, § 1, effective June 4. **L. 2010:** (4) amended, (SB 10-175), ch. 188, p. 791, § 44, effective April 29.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3.6), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2005 act amending subsection (3.6), see section 1 of chapter 194, Session Laws of Colorado 2005.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Shelter hearing is a preadjudicatory stage of the case and is not intended to resolve the rights of natural parents to the legal custody of their child. S.L. v. Dist. Court, 676 P.2d 12 (Colo. 1984); W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is subject to the longer incarceration period. The termination of parental rights concerning the older child must still be subject to the longer allowable incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

19-3-404. Temporary shelter - child's home. The court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the county or district department of social services, which has emergency caretaker services available, to remain in the child's home with the child until a parent, legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the department, to resume charge of the child, but in no event shall such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the

child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the department, to resume charge of the child. The director of the county or district department of social services shall designate in writing the representatives of the county or district departments authorized to perform such duties.

Source: L. 87: Entire title R&RE, p. 778, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-103.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-405. Temporary protective custody. (1) In addition to other powers granted to the court for the protection of children, the court may issue verbal or written temporary protective custody orders or emergency protection orders, or both. Each judicial district shall be responsible for making available a person appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

(2) (a) Temporary protective custody orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child he or she reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the circumstances or conditions of the child are such that continuing the child's place of residence or in the care and custody of the person responsible for the child's care and custody would present a danger to that child's life or health in the reasonably foreseeable future.

(b) Emergency protection orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child the physician reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the child is able to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody only if certain emergency protection orders are entered. An emergency protection order may include but is not limited to:

(I) Restraining a person from threatening, molesting, or injuring the child;

(II) Restraining a person from interfering with the supervision of the child; or

(III) Restraining a person from having contact with the child or the child's residence.

(3) The county department of social services shall be notified of such action immediately by the court-appointed official in order that child protection proceedings may be initiated.

(4) In any case, such temporary protective custody or emergency protection shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.

Source: L. 90: Entire section added, p. 1036, § 3, effective April 3. **L. 91:** (1) amended, p. 363, § 34, effective April 9. **L. 97:** Entire section amended, p. 519, § 7, effective July 1.

ANNOTATION

Temporary protective custody orders are not subject to appeal. Temporary protective custody orders are interim orders pending a final factual determination of the allegations set forth in the petition in dependency or neglect. Because they are of short duration and terminate with the ruling of the preliminary injunction, an immediate appeal is not necessary to protect the rights of the parties. People ex. rel. M.W., 140 P.3d 231 (Colo. App. 2006).

19-3-406. Fingerprint-based criminal history records check - providers of emergency placement for children - use of criminal justice records. (1) (a) A county department may elect to collaborate with local law enforcement agencies to perform initial criminal history record checks followed by fingerprint verification pursuant to the provisions of this section. If a county department elects to collaborate with local law enforcement agencies pursuant to this section, then any time a child is taken into temporary custody by a law enforcement officer and any time the court places temporary custody of a child with a county department pursuant to the provisions of this part 4, and a relative or other available person is identified as a potential emergency placement for the child, the local law enforcement agency shall conduct an initial criminal history record check of the relative or other available person prior to the county department or the law enforcement officer placing the child in the emergency placement. When a county department of social services has temporary custody of a child pursuant to the provisions of this part 4 and contacts the local law enforcement agency for an initial criminal history record check of a person who is identified as a potential emergency placement for the child pursuant to the provisions of this section, the local law enforcement agency shall provide the county department with a verbal response regarding the person's criminal history and shall not provide the county department with documentation of the person's criminal history, consistent with the provisions of Public Law 92-544, and regulations promulgated thereunder, as amended.

(b) If a county department of social services elects to request an initial criminal history record check pursuant to the provisions of this section, the child may not be placed with the relative or other available person if the initial criminal history record check conducted pursuant to paragraph (a) of this subsection (1) reflects a criminal history described in subsection (4) of this section.

(c) If a county department of social services elects to request an initial criminal history record check pursuant to the provisions of this section, the child may be placed with the relative or other available person if the initial criminal history record check does not reflect a criminal history described in subsection (4) of this section.

(2) A relative or other available person who is not disqualified as an emergency placement for a child pursuant to paragraph (b) of subsection (1) of this section and who authorizes a child to be placed with him or her on an emergency basis pursuant to the provisions of this part 4 shall report to a local law enforcement agency for the purpose of providing fingerprints to the law enforcement agency no later than five days after the child is placed in the person's home or no later than fifteen calendar days when exigent circumstances exist. If the relative or other available person fails to report to the local law enforcement agency within this time period, the county department of social services or the law enforcement officer, as appropriate, shall immediately remove the child from the physical custody of the person. The county department of social services shall contact the local law enforcement agency to verify that a relative or other available person identified by the county department reported to the local law enforcement agency for fingerprinting within the time period specified by this subsection (2).

(3) When a person reports to a local law enforcement agency pursuant to the provisions of subsection (2) of this section, the local law enforcement agency shall fingerprint the person and forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The local law enforcement agency shall be the authorized agency to receive information regarding the results of the state and national fingerprint-based criminal history record checks. If the fingerprint-based criminal history record check indicates that the person has a criminal history described in subsection (4) of this section, the county department of social services or the local law enforcement officer, whichever is appropriate, shall immediately remove the child from the emergency placement and shall not place a child with the person who has the criminal history without court involvement and an order of the court affirming placement of the child with the person.

(4) A county department or a local law enforcement agency that elects to perform an initial criminal history record check pursuant to the provisions of this section shall not make an emergency placement or continue the emergency placement of a child with a person who has been convicted of one or more of the following offenses:

(a) Child abuse, as described in section 18-6-401, C.R.S.;

(b) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(c) A felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(d) A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(e) A felony involving physical assault or a drug-related offense, committed within the preceding five years;

(f) Violation of a protection order, as described in section 18-6-803.5, C.R.S.;

(g) A crime involving homicide; or

(h) An offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in paragraphs (a) to (g) of this subsection (4).

(5) The state board of human services shall promulgate rules to implement the provisions of this section, consistent with the provisions contained in part 3 of article 72 of title 24, C.R.S.

(6) For purposes of this section, "initial criminal history record check" means a name-based state and federal criminal history record check performed by a local law enforcement agency utilizing the records of the Colorado bureau of investigation and the federal bureau of investigation.

Source: L. 2005: Entire section added, p. 616, § 1, effective May 27. **L. 2007:** (2) amended, p. 1017, § 6, effective May 22.

PART 5

PETITION, ADJUDICATION, DISPOSITION

19-3-500.2. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is beneficial for a child who is removed from his or her home and placed in foster care to be able to continue relationships with his or her brothers and sisters, regardless of age, in order that the siblings may share their strengths and association in their everyday and often common experiences. The general assembly also finds that the initial decisions about temporary placement of a child may affect the ultimate permanent placement of the child or of the children in a sibling group.

(b) When parents and other adult relatives are no longer available to a child, the child's siblings constitute his or her biological family;

(c) When placing children in foster care, efforts should be made to place siblings together, unless there is a danger of specific harm to a child or it is not in the child's or children's best interests to be placed together. The general assembly further finds that if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, there should be a rebuttable presumption that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption should be rebuttable by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(2) The general assembly also declares that nothing in this article regarding the placement of sibling groups together should be construed as requiring the removal of a child from his or her home and placement into foster care if that is not in the best interests of the child.

Source: L. 2000: Entire section added, p. 474, § 2, effective July 1. **L. 2003:** (1)(c) amended, p. 2624, § 4, effective June 5.

19-3-501. Petition initiation - preliminary investigation - informal adjustment. (1) Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, as provided in this article, the law enforcement officer or other person may refer the matter to the court, which shall have a preliminary investigation made to determine whether the interests of the child or of the community require that further action be taken, which investigation shall be made by the probation department, county department of social services, or any other agency designated by the court. On the basis of the preliminary investigation, the court may:

(a) Decide that no further action is required, either in the interests of the public or of the child;

(b) Authorize a petition to be filed; or

(c) (I) Make whatever informal adjustment is practicable without a petition if:

(A) The child and his parents, guardian, or other legal custodian were informed of their constitutional and legal rights, including being represented by counsel at every stage of the proceedings;

(B) The facts are admitted and establish prima facie jurisdiction; except that such admission shall not be used in evidence if a petition is filed; and

(C) Written consent is obtained from the parents, guardian, or other legal custodian and also from the child, if of sufficient age and understanding.

(II) Efforts to effect informal adjustment may extend no longer than six months.

(2) (a) Upon receipt of a report filed by a law enforcement agency, or any other person required to report pursuant to section 19-3-304 (2) indicating that a child has suffered abuse as defined in section 19-1-103 (1) and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report, as described in paragraph (a) of this subsection (2), from any person other than those specified in said paragraph (a), the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.

Source: L. 87: Entire title R&RE, p. 778, § 1, effective October 1. **L. 2002:** (2)(a) amended, p. 1035, § 78, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The state is the exclusive party to bring neglect and dependency proceedings. A private person, such as a grandparent, can request the county department of social services to bring such a proceeding or refer the matter to the juvenile court, as provided in subsection (2), but she cannot bring a neglect and dependency petition on her own. McCall v. Dist. Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982).

While a grandparent can report suspected child abuse or neglect and, thereby, initiate an investigation, this section does not require that the court undertake its own investigation by granting a hearing at the request of a grandparent, nor does this section require that the court order the county department of social services to conduct an additional investigation if it appears that a preliminary investigation has already been completed and the county department saw no need to pursue the matter. In re L.F., 121 P.3d 267 (Colo. App. 2005).

"Petition" signifies initial pleading of dependency or neglect requesting the court to take jurisdiction rather than discussion of termination of parental rights appearing in a social worker's report. People in Interest of H.A.C. v. D.C.C., 198 Colo. 260, 599 P.2d 881 (1979), cert. denied, 444 U.S. 1022, 100 S. Ct. 680, 62 L. Ed. 2d 654 (1980).

A petition which shows on its face that the child is neither dependent nor delinquent deprives the court of jurisdiction. Carrera v. Kelley, 131 Colo. 421, 283 P.2d 162 (1955).

That the mother of a child is convicted of a felony, and leaves the child in the care of its grandmother who is giving it proper care, does

not invoke the jurisdiction of a juvenile court in a dependency proceeding, and speculation as to the future conduct of the mother has no place in such proceedings. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

In a proceeding to declare a child dependent and neglected, initiated under former section by parties having temporary care of the child, there being no evidence that the child was at any time in improper hands or in unwholesome surroundings, and the petition showing on its face that its purpose was to secure a continuation of the situation existing at the time the action was commenced, no grounds for dependency existed. Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

And should be dismissed on a court's own motion when it is fully advised of the fact, or could take notice thereof, that petitioner and respondent in dependency proceeding under former section, husband and wife, had continued to live together over the years involved. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

The mere act of dismissing the petition does not decree custody of the child, for custody in dependency cases can only be determined after the child has been decreed dependent and neglected. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

This section provides for proceedings in the name of the state for the protection of a child and, in which proceedings, the claims of the warring contestants must give way to the welfare of the child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Petitioner represents the state, not a party to a dispute over custody of a child. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947).

A petition in dependency must be filed, not in behalf of any individual, but only in behalf of the state for the purpose of protecting a minor child. Such petition should not be filed by any petitioner, and particularly not by an attorney at law, who is an officer of the court, except singly for the protection of the child. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Geisler v. People, 135 Colo. 121, 308 P.2d 1000 (1957).

Petition essential for jurisdiction. Without a petition in writing setting forth all the facts concerning what constitutes the child a dependent and verified by the affidavit of the petitioner, a juvenile court has no jurisdiction over the subject matter. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

"Petition" signifies initial pleading of dependency or neglect requesting the court to take jurisdiction rather than discussion of termination of parental rights appearing in a social worker's report. People in Interest of H.A.C. v. D.C.C., 198 Colo. 260, 599 P.2d 881 (1979), cert. denied, 444 U.S. 1022, 100 S. Ct. 680, 62 L. Ed. 2d 654 (1980).

A petition in dependency should be filed only upon credible information and belief that the child is so circumstanced that for its own protection and well-being it should be taken from existing custody and become a ward of the state. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953).

Petitioner should not file a petition without knowledge of facts justifying belief of dependency and, when the petition is filed, should see that evidence is presented supporting it. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947).

One assuming to sign a petition equally assumes the obligation to present evidence sustaining it, and one should not verify any allegation of such a petition as true of his own knowledge, unless the facts set forth therein are within his personal knowledge. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953).

In addition to the other requirements for jurisdiction, the essential element in all cases is that the petitioner have knowledge of a child in his county who appears to be dependent. Geisler v. People, 135 Colo. 121, 308 P.2d 1000 (1957).

Petition did not cover children born subsequently. A petition verified on a certain date, covering the facts as of that date, cannot cover children born at a later date. Any order entered on such a petition regarding support is void, and consequently, all subsequent orders are likewise void. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

This section does not preclude correction of erroneous statutory reference. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

Termination of parental rights is a drastic remedy. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

The state is the exclusive party to file a petition in dependency and neglect, and a guardian ad litem has no authority to assume the role of the state. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

However, the trial court is not required to dismiss a dependency and neglect petition merely because the state chooses for any reason not to pursue the proceedings. McCall v. Dist. Ct., 651 P.2d 392 (Colo. 1982); People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986); L.G. v. People, 890 P.2d 647 (Colo. 1995).

Dependency and neglect petition may not be dismissed over the objection of the guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

If there is such an objection by the guardian ad litem, the trial court must conduct a hearing and specifically determine whether the petition is supported by a preponderance of the evidence and the child is in fact dependent and neglected. That determination may be appealed by the

guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

Dependency and neglect action differs from adversarial proceeding since the safety of the child, not the custodial interest of the parent, is the paramount concern. L.G. v. People, 890 P.2d 647 (Colo. 1995).

Parental Kidnapping Prevention Act of 1979 does not apply to a dependency and neglect action and therefore does not preempt state law. L.G. v. People, 890 P.2d 647 (Colo. 1995).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-3-502. Petition form and content - limitations on claims in dependency or neglect actions. (1) The petition and all subsequent court documents in any proceedings brought under this article shall be entitled "The People of the State of Colorado, in the Interest of _____, a child (or children) and Concerning _____, Respondent." The petition shall be verified, and the statements in the petition may be made upon information and belief.

(2) The petition shall set forth plainly the facts which bring the child within the court's jurisdiction. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, custodian, legal custodian, stepparent, or spousal equivalent or of his nearest known relative if no parent, guardian, custodian, legal custodian, stepparent, or spousal equivalent is known.

(2.5) The petition in each case where removal of a child from the home is sought shall either state that reasonable efforts to prevent out-of-home placement were made and shall summarize such efforts or, if no services to prevent out-of-home placement were provided, the petition shall contain an explanation of why such services were not provided or a description of the emergency which precluded the use of services to prevent out-of-home placement of the child. The petition shall be verified.

(2.7) (a) Pursuant to the provisions of section 19-1-126, the petition shall:

(I) Include a statement indicating what continuing inquiries the county department of social services has made in determining whether the child who is the subject of the proceeding is an Indian child;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts shall be attached to the petition and filed with the court or filed within ten days after the filing of the petition, as specified in section 19-1-126 (1) (c).

(3) All petitions filed alleging the dependency or neglect of a child shall include the following statements:

(a) "Termination of the parent-child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained. A separate hearing must be held before such termination is ordered. Termination of the parent-child legal relationship means that the child who is the subject of this petition would be eligible for adoption."

(b) "If the child is placed out of the home for a period of twelve months or longer, the court shall hold a permanency hearing within said twelve months to determine a permanent placement for the child."

(c) "The review of any decree of placement of a child subsequent to the three-month review required by section 19-1-115 (4) (a) may be conducted as an administrative review by the department of human services, as appropriate. If you are a party to the action, you have a right to object to an administrative review, and if you object, the review shall be conducted by the court."

(4) No counterclaim, cross claim, or other claim for damages may be asserted by a respondent in an action alleging the dependency or neglect of a child, but nothing in this subsection (4) shall be construed to prohibit a respondent from asserting a claim for damages in an action independent of an action alleging the dependency or neglect of a child.

(5) Any parent, guardian, or legal custodian alleged to have abused or neglected a child shall be named as a respondent in the petition concerning such child. The county attorney,

city attorney of a city and county, or special county attorney may name any other parent, guardian, custodian, legal custodian, stepparent, or spousal equivalent as a respondent in the petition if he determines that it is in the best interests of the child to do so.

(6) A person may be named as a special respondent on the grounds that he resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child. Personal jurisdiction shall be obtained over a special respondent once he is given notice by a service of summons and a copy of the petition or motion describing the reasons for his joinder. A special respondent shall be afforded an opportunity for a hearing to contest his joinder and the appropriateness of any orders that affect him and shall have the right to be represented by counsel at such hearing. At any other stage of the proceedings, a special respondent may be represented by counsel at his own expense.

(7) In addition to notice to all parties, the court shall ensure that notice is provided of all hearings and reviews held regarding a child to the following persons with whom a child is placed: Foster parents, pre-adoptive parents, or relatives. Such persons shall have the right to be heard at such hearings and reviews. The persons with whom a child is placed shall provide prior notice to the child of all hearings and reviews held regarding the child. The foster parent, pre-adoptive parent, or relative providing care to a child shall not be made a party to the action for purposes of any hearings or reviews solely on the basis of such notice and right to be heard. Notice of hearings and reviews shall not reveal to the respondent parent or other relative the address, last name, or other such identifying information regarding any person providing care to the child.

Source: L. 87: Entire title R&RE, p. 779, § 1, effective October 1. **L. 92:** (3) amended, p. 224, § 10, effective July 1. **L. 93:** (3)(b) amended, p. 389, § 2, effective April 19; (2.5) added, p. 2016, § 7, effective July 1. **L. 94:** (3)(c) amended, p. 2684, § 202, effective July 1. **L. 98:** (7) added, p. 1418, § 4, effective July 1. **L. 99:** (3)(b) amended, p. 911, § 5, effective July 1. **L. 2002:** (2.7) added, p. 786, § 6, effective May 30. **L. 2007:** (7) amended, p. 1017, § 7, effective May 22.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (3)(b), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2002 act enacting subsection (2.7), see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (November 2002). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (August 2004).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Admission by a mother with whom children did not reside that child had been assaulted and lacked proper parental care is not sufficient to sustain an adjudication of dependency and neglect against a father who disputed such allegations and demanded a jury trial. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Stepparent not required to be named a respondent in a dependency or neglect proceeding; the county attorney is vested with discretion in deciding whether it is in the best interests of the child to name a stepparent as a respondent. People ex rel. of E.S., 49 P.3d 1221 (Colo. App. 2002).

19-3-503. Summons - issuance - contents - service. (1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of the parent-child legal relationship is a possible remedy under the proceedings and shall set forth the constitutional and legal rights of the child, his parents, guardian, or legal custodian, or

any other respondent or special respondent, including the right to have an attorney present at the hearing on the petition.

(2) No summons shall issue to any respondent who appears voluntarily or who waives service, but any such person shall be provided with a copy of the petition and summons upon appearance or request.

(3) The summons shall require the person or persons having the physical custody of the child to appear, and it may order the child to appear before the court at a time and place stated. If the person or persons so summoned are not the parents or guardian of the child, then a summons shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for hearing.

(4) The court on its own motion or on the motion of any party may join as a respondent or special respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his own behalf or on behalf of the child.

(5) If it appears that the welfare of the child or of the public requires that the child be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

(6) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the district court.

(7) Summons shall be served personally, pursuant to the Colorado rules of civil procedure. If personal service is used, it shall be sufficient to confer jurisdiction if service is effected not less than two days before the time fixed in the summons for the appearance of the person served; except that personal service shall be effected not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

(8) If the respondent required to be summoned under subsection (3) of this section cannot be found within the state, the fact of the child's presence in the state shall confer jurisdiction on the court as to any absent respondent if due notice has been given in the following manner:

(a) When the residence of the person to be served outside the state is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete within five days after return of the requested receipt.

(b) When the person to be served has no residence within Colorado and his place of residence is not known or when he cannot be found within the state after due diligence, service may be by publication pursuant to rule 4(h) of the Colorado rules of civil procedure; except that service may be by a single publication and must be completed not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

Source: L. 87: Entire title R&RE, p. 780, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "Medical Diagnosis as a Gateway to the Child Welfare System: A Legal Review for Physicians, Lawyers, and Social Workers", see 65 Den. U. L. Rev. 213 (1988).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Substantial compliance with the statutory provisions is essential and must appear of record. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

For the distinction between notice required by this section and that required by § 19-4-

107. See People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Voluntary appearance waives personal service. The voluntary appearance of juvenile's mother and her participation in the transfer hearing constitutes a waiver of her right to personal service. People in Interest of G.A.T., 183 Colo. 111, 515 P.2d 104 (1973).

Parent's constitutional rights of due process were not violated where she was given adequate notice that the juvenile court would determine at the hearing whether her parental rights should be terminated, and was afforded an opportunity to be heard on this issue. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

In a custody proceeding where parents of allegedly dependent and neglected children were timely served with summons, were advised of their rights by court, had adequate time in which to prepare a defense, appeared, proceeded to trial, and were represented by able counsel, the rights of the parents were not impaired and there was substantial compliance with requirements of this section relating to service of summons. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

Service on mother confined in penitentiary was effective. Bd. of Control of State Home v. Mulertz, 60 Colo. 468, 154 P. 742 (1916).

Proceedings defective where service did not comply with section. In a proceeding to determine the dependency of children, it was held, under the disclosed facts, that there was no timely service or waiver of service, that the parents were not advised regarding the nature and effect of the proceeding as required by this section, that the court was without jurisdiction, and that the entire proceedings, decree, and order of commitment were void. Ziemer v. Wheeler, 89 Colo. 242, 1 P.2d 579 (1931).

The joining of the district attorney and law enforcement officers as parties to case does not exceed the court's jurisdiction to join as a respondent any person it deems necessary to the action. Where court concluded in dependency and neglect proceedings based on alleged sexual abuse that appropriate treatment plan required confidentiality of communications, the court joined law enforcement officials as parties to assure that they would not seek to learn the content of such communications. People v. District Court, 731 P.2d 652 (Colo. 1987).

Mother who deliberately concealed herself from law enforcement and the court lacked standing to challenge the constitutionality of subsection (8)(b) authorizing service by a single publication because her claimed injury was self-inflicted. People ex rel. J.C.S., 169 P.3d 240 (Colo. App. 2007).

19-3-504. Contempt - warrant. (1) Any person summoned or required to appear as provided in section 19-3-503 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the respondent or for the child.

Source: L. 87: Entire title R&RE, p. 781, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-505. Adjudicatory hearing - findings - adjudication. (1) At the adjudicatory hearing, the court shall consider whether the allegations of the petition are supported by a preponderance of the evidence; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(2) Evidence tending to establish the necessity of separating the child from the parents or guardian may be admitted but shall not be required for the making of an order of adjudication.

(3) Adjudicatory hearings shall be held at the earliest possible time, but in no instance shall such hearing be held later than ninety days after service of the petition, or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), in no instance shall such hearing be held later than sixty days after service of the petition unless the court finds that the best interests of the child will be served by granting a delay. If the court determines that a delay is necessary, it shall set forth the specific reason why such delay is necessary and shall schedule the adjudicatory hearing at the earliest possible time following the delay.

(4) (a) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

(b) In such event, the court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(c) If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

(d) If it appears from the evidence that the child may have a mental illness or developmental disability as these terms are defined in articles 10 and 10.5 of title 27, C.R.S., paragraphs (a) to (c) of this subsection (4) shall not apply, and the court shall proceed under section 19-3-506.

(5) After making a finding as provided by paragraph (a) of subsection (7) of this section but before making an adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by a juvenile probation officer as the court may prescribe, if:

(a) Consent is given by the parties, including the child and his parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceeding, including their right to have an adjudication made either dismissing or sustaining the petition;

(b) Such continuation shall extend no longer than six months without review by the court. Upon review, the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

(6) When the court finds that the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His or her parents, guardian, or legal custodian shall also be discharged from any restriction or other previous temporary order. The court shall inform the respondent that, pursuant to section 19-3-313.5 (3) (f), the department shall expunge the records and reports for purposes related to employment or background checks.

(7) (a) When the court finds that the allegations of the petition are supported by a preponderance of the evidence, except when the case is continued as provided in the introductory portion to subsection (5) of this section, the court shall sustain the petition and shall make an order of adjudication setting forth whether the child is neglected or dependent. Evidence that child abuse or nonaccidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent, and such evidence shall be sufficient to support an adjudication under this section.

(b) The court shall then hold the dispositional hearing, but such hearing may be continued on the motion of any interested party or on the motion of the court. Such continuance shall not exceed thirty days unless good cause exists. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the dispositional hearing shall be held within thirty days after the adjudicatory hearing unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay. It is the intent of the general assembly that the dispositional hearing be held on the same day as the adjudicatory hearing, whenever possible.

Source: L. 87: Entire title R&RE, p. 781, § 1, effective October 1. **L. 94:** (3) and (7) amended, p. 2053, § 6, effective July 1. **L. 96:** (6) amended, p. 1290, § 3, effective January 1, 1997. **L. 2000:** (6) amended, p. 1723, § 5, effective June 1. **L. 2003:** (6) amended, p. 1407, § 12, effective January 1, 2004. **L. 2006:** (4)(d) amended, p. 1402, § 58, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (6), see section 1 of chapter 196, Session Laws of Colorado 2003.

ANNOTATION

I. General Consideration.
II. Evidence and Burden of Proof.
III. Illustrative Cases.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The adjudication procedure allows parents with limited financial ability to obtain proper treatment for their developmentally disabled children, and thereby furthers the legislative purpose of securing for such children the care that will best serve their welfare and the interests of society. The best interests of the child, rather than the parents' finances, determine what care the child receives. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Adjudication of dependency and neglect was proper where father had been bound over for trial on charge of murder of mother and held without bond because child could be found dependent and neglected under the ground that she lacked parental care or was not domiciled with her parent. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987), cert. denied, 754 P.2d 1177 (Colo. 1988).

Was also proper where the jury verdict was based on allegations in the petition in dependency and neglect; the only argument presented to support the finding of dependency was the allegation in the petition of the act of sexual molestation initially told to a pediatrician by the child and subsequently investigated by the department of social services; the father did not contend that the jury's determination rested on some unknown other incident and not the sole allegation concerning him; and the verdict was intended to be a determination of the status of the child, and not a specific finding of the acts creating that status. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Admission by one respondent not necessarily dispositive of allegations disputed by any other respondents. One party's admissions, while binding upon that party, are legally insufficient to establish the allegations in a dependency and neglect petition in the face of the other party's denial. People ex rel. U.S., 121 P.3d 326 (Colo. App. 2005).

"Fault" admissions made by father involving mother, which she denied and which were not proved at an adjudicatory hearing, cannot form the basis for requiring mother to comply with a treatment plan in the absence of an adjudication. People ex rel. U.S., 121 P.3d 326 (Colo. App. 2005).

Admission by a mother with whom children did not reside that child had been assaulted and lacked proper parental care is not sufficient to sustain an adjudication of dependency and neglect against a father who disputed such allegations and demanded a jury trial. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Purpose of hearing. The purpose of the adjudicatory hearing is to determine whether the facts show, by a preponderance of the evidence, that the child is in fact neglected and dependent. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

The primary purpose of a dependency adjudication is to furnish the jurisdictional bases for state intervention to assist the parents and child in establishing a relationship and home environment that will preserve the family unit. People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982).

An adjudicatory hearing on dependency or neglect is designed to determine whether the child, for whatever reason, lacks the benefit of parental guidance, concern, protection or support to which he is entitled. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Focus. While the acts or omissions of the parents singly and together are relevant in determining the status of the child, the primary focus of the adjudicatory hearing is to determine the condition and circumstances of the child at the time of the hearing. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Adjudications of neglect or dependency are not made "as to" the parents, but rather relate only to the status of the child. People in Interest of P.D.S., 669 P.2d 627 (Colo. App. 1983); People in Interest of C.T., 746 P.2d 56 (Colo. App. 1987).

Constitutional rights guaranteed. The interest of the state in a hearing to determine if a child is dependent or neglected must be exercised without denial of fundamental fairness as required by due process clause of the fourteenth amendment. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

Due process rights of parent. Due process requires that a parent be given adequate notice

of the possibility of termination of parental rights and afforded an opportunity to be heard on that issue. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Father had no constitutional right to confront witness in civil dependency and neglect proceeding. Furthermore, the trial was fundamentally fair where child testified from another room via closed-circuit television and father had real-time communication with his attorney during child's testimony. People ex rel. S.X.M., __ P.3d __ (Colo. App. 2011).

Jury instructions concerning dependency and neglect adjudication were not misleading where instructions were stated in the past tense rather than the present tense. People ex rel. S.X.M., __ P.3d __ (Colo. App. 2011).

When adjudication becomes final judgment. The adjudication of a child as dependent or neglected, with the dispositional hearing continued to a future date, does not become a final judgment until a decree of disposition is entered. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Only final orders of juvenile court may be appealed. People in Interest of B.W., 43 Colo. App. 235, 601 P.2d 1086 (1979).

Interest and welfare of child control. Even the parental right to its custody and control must yield to the interests and welfare of the child. Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954).

The presumption that parents are fit and proper persons to have care and custody of their children is subject to the qualification that in custody proceedings the welfare and best interests of the children is the paramount consideration. Devlin v. Huffman, 139 Colo. 417, 339 P.2d 1008 (1959).

The interest of the state in a child is based upon the statutory grounds of dependency, neglect, or abandonment, and in order for a child to be snatched from a blood relation who is giving him love and care, there certainly must be some showing as to the necessity therefor. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

Neglect or dependency proceeding is preventive as well as remedial. People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

Jurisdiction, duties, etc., of court and welfare department. It is the court which has the original and exclusive jurisdiction, and the duty, to adjudicate whether a child is dependent and neglected, to determine whether it is in the best interest of the child to terminate the legal relationship with the child's parents, and to make such further disposition as deemed necessary. If so requested by the court, it is the function of the welfare department to aid the court in the court's pursuit of its obligations. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Issue to be resolved in dependency proceeding. In a dependency proceeding the question to be resolved is not the comparative rights of different claimants of custody, but solely that of whether or not the existing custody and surroundings of the child are such that it is the duty of the state, as parens patriae, to take over its custody and make it a ward of the state. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Foxgruber v. Hansen, 128 Colo. 511, 265 P.2d 233 (1953); Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

In a dependency proceeding, the only matter at issue before the court in the first place is that of dependency. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

In a petition in dependency nothing can be determined except that a child or children involved are dependent and neglected children. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

Under former subsection (3)(b) now subsection (5)(b), after the juvenile court finds that the allegations in the petition to adjudicate a child dependent and neglected are supported by a preponderance of the evidence, the court can hold hearings on the petition for a maximum of two six-month periods after which it can take no other action than either to dismiss or sustain the petition. People in Interest of K.M.J., 698 P.2d 1380 (Colo. App. 1984).

Parental care is not sole issue. Whether or not a child is receiving parental care is not the sole issue in a dependency proceeding. Care of a child by other sources is relevant. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

If child found not dependent, action should be dismissed. If the child is found not dependent, then there is nothing further to be considered and the action should be dismissed. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

No judgment of dependency was entered by the trial court which is a prerequisite to establish responsibility against petitioner to contribute to the child's support. Rios v. People in Interest of Martinez, 154 Colo. 88, 388 P.2d 402 (1964).

Once jury found child not dependent and neglected, the dependency and neglect court was without jurisdiction to enter further orders despite mother's no-fault admission. The court must dismiss the case and discharge the father and child from any detention or restriction previously ordered. Mother's no-fault admission was sufficient only to support court's continuing jurisdiction pending a determination by the jury as to whether the child was dependent and neglected. The court did not have jurisdiction to entertain subsequent motion by paternal grand-

father for custody of the child. People ex rel. A.H., __ P.3d __ (Colo. App. 2011).

Disposition issue follows finding of dependency. If the child shall first have been found dependent upon proper evidence, then, and only then, should the court in orderly procedure receive evidence concerning, and determine, the disposition of the child. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

Adjudicatory and dispositional hearings may be combined or separate. The clear meaning and import of the hearing provisions provide in proper cases that the adjudicatory hearing and the dispositional hearing may be separate hearings, but that also, in a proper case, providing prior notice thereof is given, the dispositional hearing may be had coextensively with the adjudicatory hearing. When the latter alternative is followed, it is necessary that there be presented at the hearing, evidence relating to factors which the court must consider before it can make a proper disposition. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The Colorado Children's Code provides for either a combined or bifurcated adjudicatory-dispositional procedure. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Court's grant of extension of time for adjudicatory hearing, upon request of child's guardian ad litem, satisfied statutory requirements and court's refusal to dismiss case was not erroneous. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987), cert. denied, 754 P.2d 1177 (Colo. 1988).

Subsection (5)(b)'s 12-month time limit for holding a hearing is not a jurisdictional requirement. Thus, the court's failure to follow the statutory requirement was an erroneous decision not affecting jurisdiction. Since the mother joined in the motion that continued the matter beyond the 12-month period she is not entitled to relief. People ex rel. A.W., 74 P.3d 497 (Colo. App. 2003).

Court's failure to enter adjudicatory order did not divest the court of subject matter jurisdiction to conduct further proceedings. Mother admitted the child was dependent and neglected and the court accepted the admission and deferred adjudication pursuant to subsection (5). Subsequently, mother voluntarily participated in termination proceedings and did not deny that the child was dependent and neglected nor object to court's erroneous finding that the child had been adjudicated dependent and neglected. People ex rel. N.D.V., 224 P.3d 410 (Colo. App. 2009).

Party wishing to file a motion for summary judgment cannot comply with both this section and C.R.C.P. 56(c). Under C.R.C.P. 81, the timing of subsection (3) of this section controls. People ex rel A.C., 170 P.3d 844 (Colo. App. 2007).

Court correct in allowing the guardian ad litem to present his evidence before ruling on mother's motion for a directed verdict since primary focus of hearing concerned the child's best interests, and since the guardian ad litem had advised the court of his intent to align the child's case with that of the people. People in Interest of M.M.T., 676 P.2d 1238 (Colo. App. 1983).

Order based on conflicting evidence is conclusive. The power of a juvenile court in matters involving the custody of minor children is great, and while it should be exerted with the utmost circumspection, an order based upon conflicting evidence will not be disturbed on review. Hudson v. Mattingley, 69 Colo. 528, 195 P. 113 (1921).

Where trial court resolves conflicting evidence, its findings will not be disturbed on review, even though it would be possible for reasonable men to arrive at different conclusions based on the same facts. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

Attorney fees. The attorney retained by a petitioner therein must secure his compensation, if any is to be had, from the petitioner. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953); Geisler v. People, 135 Colo. 121, 308 P.2d 1000 (1957).

Applied in People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976); People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979); People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (1980); People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People in Interest of C.A.K., 628 P.2d 136 (Colo. App. 1980).

II. EVIDENCE AND BURDEN OF PROOF.

A determination of dependency and neglect must be based on a consideration of existing circumstances and not on speculation concerning future possibilities. People in Interest of C.T., 746 P.2d 56 (Colo. App. 1987).

State has burden of proof. Where a mother files a petition asking the state to seek a determination of dependency and neglect, in order to gain the relief requested, the state has the burden of establishing the assertion thereon that the children are "neglected or dependent". In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Dependency requires preponderance of proof. It is only necessary to prove the allegations of the petition alleging children to be dependent and neglected in a custody hearing by a preponderance of the evidence. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

In an action to declare children dependent or neglected, petitioner must prove the elements by a preponderance of the evidence. In re People in Interest of R.K., 31 Colo. App. 459, 505 P.2d 37 (1972).

Preponderance of evidence standard does not violate due process. Subsection (1), which permits a dependency adjudication under the preponderance of evidence standard, does not violate due process of law. People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982).

Where petitioner was deprived of significant parental rights that did not amount to a permanent termination of the parent-child relationship, her constitutional due process rights were not violated by the application of a preponderance of the evidence standard. While the court's order granted custody of the petitioner's children to the department, appointed the foster parents as permanent legal guardians, and ordered that the petitioner was to have no contact with her children until they were over 18, the trial court did retain jurisdiction over the case until the children were 21 and the petitioner retained the right to consent or withhold consent to adoption, the right to reasonable parenting time except as restricted by the court, and the right to determine the children's religious affiliation. L.L. v. People, 10 P.3d 1271 (Colo. 2000).

This section does not lessen or shift the burden of proof. It allows the trial court to submit a case to the jury once the petitioner has presented a prima facie case, i.e., evidence that nonaccidental injury has occurred, and if the jury finds the children are neglected or dependent, that prima facie evidence shall be sufficient to uphold the jury's determination. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976); People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

This section does not direct that an adjudication of neglect or dependency shall be made on evidence merely showing nonaccidental injury, nor does it indicate that a respondent has the burden to rebut the evidence presented. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

Nor direct adjudication of neglect or place burden on respondent to rebut. This section does not direct that an adjudication of neglect and dependency shall be made on evidence merely showing nonaccidental injury, nor does it indicate that a respondent has the burden to rebut the evidence presented. People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

Evidence must be clear and convincing and not based on hearsay to support finding that child was neglected and dependent. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

A parent, if a fit and suitable person, has the prior right of custody of his children over a grandparent or any other person or the state. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

And a parent is presumed to be a fit and suitable person to have the custody of his children. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Devlin v. Huffman, 139 Colo. 417, 339 P.2d 1008 (1959); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

The legal presumption is that natural parents are entitled to the custody of their children unless otherwise clearly established. Carrera v. Kelley, 131 Colo. 421, 283 P.2d 162 (1955).

The presumption is that the parents are fit and suitable persons to be entrusted with the care of their minor children, and that the interests and welfare of such children are best subserved when under such care and control. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Such presumption can be overcome only by convincing evidence to the contrary. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

Such presumption is like the presumption of innocence in a criminal case, ever present, throughout the controversy, until overcome by the most solid and substantial reasons established by plain and certain proofs. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Such presumption is ever present and can be overcome only by plain and certain proofs. Devlin v. Huffman, 139 Colo. 417, 339 P.2d 1008 (1959).

The statute of limitations for determining paternity does not apply to a proceeding to determine liability for support of a dependent, illegitimate child. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

Question for trier of fact. Where, in a neglect or dependency proceeding, it is shown that a child has sustained a nonaccidental injury resulting from an instance of parent-administered corporal punishment, the reasonableness of that punishment is a question to be decided by the trier of fact. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

Treatment of other children as consideration. Although physical injury to a child was not shown, it was proper for the trial court to consider a treatment accorded the other children in reaching a conclusion regarding the nonabused daughter. People in Interest of C.R., 38 Colo. App. 252, 557 P.2d 1225 (1976).

The trial court could reasonably infer that a nonabused child lacked proper parental care from the evidence establishing mistreatment of the others. People in Interest of C.R., 38 Colo. App. 252, 557 P.2d 1225 (1976).

The trial court may properly consider the treatment accorded the parents' other children in determining whether the child before it is neglected and dependent. People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

While a parent's treatment of one child may be considered in determining whether another child is dependent or neglected, consideration of the individual needs, strengths, and weaknesses of each child and each parent is also probative. People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

Evidence of a child's physical care, surroundings, and well-being is competent and material evidence to the issues in a dependency action. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

The consent to adoption signed by the parents had no legal effect other than as evidence of an intent to abandon the child. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

Cause of illness must be proven. To justify finding of dependency and termination of parental rights, evidence must be shown that illness or disease in specific case was caused or resulted from lack of parental care. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

Evidence of care from other than parental sources admissible. If, through arrangements made by a parent, a child is being properly cared for by those who have a genuine interest in its welfare, the fact that the mother has obtained such help and has sought out and procured proper care for the child is evidence that the parent is not neglecting the child. It is also evidence of proper concern for the child's welfare and tends to establish that she was not abandoned or left homeless. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958); Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Evidence that child has been mistreated or abused in the past was sufficient to support adjudication of dependency and neglect of child. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

Admission by a mother with whom children did not reside that child had been assaulted and lacked proper parental care is not sufficient to sustain an adjudication of dependency and neglect against a father who disputed such allegations and demanded a jury trial. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Summary judgment in favor of defendant and against mother of 9-year-old child was inappropriate under § 19-3-102 (1)(b) to (1)(d) where other than child's claim of abuse, there was no evidence of abuse under subsection (7)(a) which might have occurred while the child, who also spent time with noncustodial father, was in the mother's custody. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Further, even if court were to characterize the enlarged vaginal opening as evidence of abuse pursuant to subsection (7)(a), it would establish only prima facie, not conclusive, evidence that child was neglected or dependent under this section. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Application of exclusionary rule in a dependency and neglect case requires the court to balance the deterrent benefits of applying the rule against the societal cost of excluding relevant evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

Here, applying the rule would have a high societal cost in terms of protecting child welfare interests. Therefore, the court did not err in denying mother's motion to suppress evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

III. ILLUSTRATIVE CASES.

Lacking transcript, evidence, order reversed. Where an order was entered declaring a child neglected and dependent, severing parental rights, and holding the child's grandfather in contempt of court for failure to deliver the child, but the court reporter certified that there had been no transcript made of any of the hearings prior to the one on the contempt violation, and since there was no evidence or showing that the home environment which the grandfather might provide for the child would be unsatisfactory, the judgment and orders of the trial court were reversed. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Prima facie dependency established. Campbell v. Gilliam, 127 Colo. 471, 257 P.2d 965 (1953).

Proper parental care established. A child placed with relatives or friends does have proper parental care when the parent or parents have sent gifts of clothing, money, food, household items, toys, and medical supplies to the child, and have frequently visited and communicated with the child. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

The single fact that a father has ceased making support payments to the mother for those children on whose behalf the state is invoking the doctrine of parens patriae does not establish that the children are "neglected or dependent". This is particularly true where the father is acting under what he considers to be a controlling order of court which placed custody of the children with him. Under these circumstances, there is no showing that the father is failing or refusing to perform his obligations toward the children. In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Lack of parental care established. Most of the evidence presented in support of the petition was undisputed and the totality of all the evidence clearly supports the finding and order of the juvenile court that the evidence established beyond a reasonable doubt that the infant child lacked proper parental care because of his mother's apparent limitations and because of her actions and omissions. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

Where the mother has disappeared after refusing to support the child, where the alleged father is in the penitentiary, and where the child has been abandoned in the care of strangers who are in no way related to the natural parents or said child, who are under no legal obligation to care for and support the child, it is error for the trial court to find that the child was receiving proper parental care. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Effect of parent's conviction of crime. The fact alone that a father had been convicted of a violation of the prohibition laws of the state did not justify a court order depriving him of the custody and control of his minor children. Ziemer v. Wheeler, 89 Colo. 242, 1 P.2d 579 (1931).

Finding of abandonment justified. Where the evidence disclosed that the father of children, serving in the United States Navy, had notice of a dependency proceeding by mail, but upon returning failed to make any such arrangements or provision for the care of the children, a finding that he had abandoned such children was justified. Olsen v. Davidson, 142 Colo. 205, 350 P.2d 338 (1960).

Where the evidence discloses that a child had been abandoned by its natural parents, a holding that such child was not dependent because it was in the custody of parties who were giving it proper care was erroneous. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Evidence of abandonment insufficient. Where a young mother deserted by her husband is forced to make a living for herself and, if possible, for her child as well, who, faced with this emergency, and by agreement with her sister, has the sister take care of the child, and the child is well cared for in the sister's household, it cannot be said that such child is a dependent child within the meaning of this section nor can it be said that the mother had abandoned the child under the circumstances. Foxgruber v. Hansen, 128 Colo. 511, 265 P.2d 233 (1953).

Habeas corpus proceeding is not adjudication of abandonment. An adjudication in a habeas corpus proceeding involving custody of a minor child is not an adjudication of abandonment as defined in the adoption statute, nor as used in the dependent and neglected child statute, a district court having no jurisdiction in abandonment proceeding. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Applied in Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931).

19-3-506. Child with a mental illness or developmental disability - procedure. (1) (a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that a child may have developmental disabilities, as defined in article 10.5 of title 27, C.R.S., the court shall refer the child to the community centered board in the designated service area where the action is pending for an eligibility determination pursuant to article 10.5 of title 27, C.R.S.

(b) If it appears from the evidence presented at an adjudicatory hearing or otherwise that a child may have a mental illness, as defined in sections 27-65-105 and 27-65-106, C.R.S., and the child has not had a mental health prescreening pursuant to section 19-3-403 (4), the court shall order a prescreening to determine whether the child requires further evaluation. Such prescreening shall be conducted as expeditiously as possible, and a prescreening report shall be provided to the court within twenty-four hours of the prescreening, excluding Saturdays, Sundays, and legal holidays.

(c) When the mental health professional finds, based upon a prescreening done pursuant to section 19-3-403 (4) or under this section, that the child may have a mental illness, as defined in sections 27-65-105 and 27-65-106, C.R.S., the court shall review the prescreening report within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and order the child placed for an evaluation at a facility designated by the executive director of the department of human services for a seventy-two-hour treatment and evaluation pursuant to section 27-65-105 or 27-65-106, C.R.S. On and after January 1, 1986, if the child to be placed is in a detention facility, the designated facility shall admit the child within twenty-four hours after the court orders an evaluation, excluding Saturdays, Sundays, and legal holidays.

(d) Any evaluation conducted pursuant to this subsection (1) shall be completed within seventy-two hours, excluding Saturdays, Sundays, and legal holidays. Neither a county jail nor a detention facility, as described in article 2 of this title, shall be considered a suitable

facility for evaluation, although a mental health prescreening may be conducted in any appropriate setting.

(e) If the mental health professional finds, based upon the prescreening, that the child does not have a mental illness, the court shall review the prescreening report within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and copies of the report shall be furnished to all parties and their attorneys. Any interested party may request a hearing on the issue of the child's mental illness, and the court may order additional prescreenings as deemed appropriate. An order for a seventy-two-hour treatment and evaluation shall not be entered unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented from a mental health professional which indicates that mental illness is present in the child. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(2) (a) When an evaluation is ordered by the court pursuant to subsection (1) of this section, the order shall specify the person or agency to whom the child shall be released when the evaluation indicates that the child does not have a mental illness.

(b) When the court orders an evaluation pursuant to subsection (1) of this section, such order shall not obligate the person doing the prescreening or the agency which such person represents to pay for an evaluation or for any hospitalization provided to the child as a result of an evaluation.

(3) (a) When the evaluation conducted pursuant to subsection (1) of this section states that the child has a mental illness, as defined in sections 27-65-105 and 27-65-106, C.R.S., the court shall treat the evaluation report as a certification under section 27-65-107, C.R.S., and shall proceed pursuant to article 65 of title 27, C.R.S., assuming all of the powers granted to a court in such proceedings.

(b) When, subsequent to referral to a community centered board pursuant to subsection (1) of this section, it appears that the child has developmental disabilities, the court may proceed pursuant to article 10.5 of title 27, C.R.S., or may follow any of the recommendations contained in the report from the community centered board.

(c) If the child remains in treatment or receives services ordered pursuant to paragraph (a) or (b) of this subsection (3), the court may suspend the proceedings or dismiss any actions pending under this title.

(d) If a child receiving treatment or services ordered pursuant to paragraph (a) or (b) of this subsection (3) leaves a treatment facility or program without prior approval, the facility or program shall notify the court of the child's absence within twenty-four hours. When such child is taken into custody, the facility or program shall be notified by the court and shall readmit the child within twenty-four hours after receiving such notification, excluding Saturdays, Sundays, and legal holidays.

(4) (a) When the report of the evaluation or eligibility determination conducted pursuant to subsection (1) of this section states that the child does not have a mental illness or developmental disability, the child shall be released to the person or agency specified pursuant to subsection (2) of this section within twenty-four hours after the evaluation has been completed, excluding Saturdays, Sundays, and legal holidays. The child shall not be detained unless a new detention hearing is held within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and the court finds at that hearing that secure detention is necessary.

(b) When the evaluation report or eligibility determination states that the child does not have a mental illness or developmental disability, the court shall set a time for resuming the hearing on the petition or any other pending matters.

Source: L. 87: Entire title R&RE, p. 783, § 1, effective October 1; (1)(b) and (1)(c) amended, p. 1586, § 58, effective October 1. **L. 92:** (1)(a) amended, p. 1398, § 57, effective July 1. **L. 94:** (1)(c) amended, p. 2684, § 203, effective July 1. **L. 2006:** (1)(b), (1)(c), (1)(e), (2)(a), (3)(a), and (4) amended, p. 1402, § 59, effective August 7. **L. 2010:** (1)(b), (1)(c), and (3)(a) amended, (SB 10-175), ch. 188, p. 792, § 45, effective April 29.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For article, "Guidance for Attorneys When Children's Mental Health Concerns are Implicated", see 31 Colo. Law. 33 (October 2002).

19-3-507. Dispositional hearing. (1) (a) After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interests of the child and the public. Such evidence shall include, but not necessarily be limited to, the social study and other reports as provided in section 19-1-107.

(b) Prior to any dispositional hearing, the caseworker of the department of human services assigned to the case shall submit to the court a statement that details the services that were offered to or provided to the family to prevent unnecessary out-of-home placement of the child and to facilitate the reunification of the child with the family. The statement shall contain an explanation of the services or actions that, had such services or actions been available, would have been necessary to enable the child to remain at home safely. In the alternative, the caseworker may submit a statement as to why no services or actions would have made it possible for the child to remain at home safely. If the child is part of a sibling group, as defined in section 19-1-103 (98.5), and the child was not placed with his or her siblings, the caseworker shall submit to the court a statement about whether it continues to be in the best interests of the child or the children in the sibling group to be placed separately. If the caseworker locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(2) If the court has reason to believe that the child may have developmental disabilities, the court shall refer the child to the community centered board in the designated service area where the action is pending for an eligibility determination pursuant to article 10.5 of title 27, C.R.S. If the court has reason to believe that the child may have a mental illness, the court shall order a mental health prescreening to be conducted in any appropriate place.

(3) (a) Except as provided in section 19-3-508 (1), the court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the child or for such child's release in the custody of such child's parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from such child's home before an order of disposition has been made.

(4) In any case in which the disposition is placement out of the home, except for children committed to the department of human services, the court shall, at the time of placement, set a review within ninety days to determine whether continued placement is necessary and in the best interests of the child and the community and whether reasonable efforts have been made to return the child to the home or in the case of a sibling group whether it is in the best interests of the children in the sibling group to be placed together. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the

entire sibling group in the joint placement is not in the best interests of a child or of the children. The judge shall review the family services plan document regarding placement of siblings. Notice of said review shall be given by the court to all parties and to the director of the facility or agency in which the child is placed and any person who has physical custody of the child and any attorney or guardian ad litem of record. The review shall be conducted in accordance with section 19-1-115 (8) (f).

(5) (a) Parents, grandparents, relatives, or foster parents who have the child in their care for more than three months who have information or knowledge concerning the care and protection of the child may intervene as a matter of right following adjudication with or without counsel.

(b) A county department of social services that placed a child in foster care shall provide the foster parent of the child and any pre-adoptive parent or relative providing care for the child with notice of any administrative review of the child's case.

(c) Upon the written request of the foster parent, pre-adoptive parent, or relative, notice of a court hearing for the child's case shall be provided in written form and may be provided through the caseworker at the usual periodic meetings with the person providing care for the child. The notice shall include, at a minimum:

(I) The child's court case number;

(II) The date and time of the next court hearing; and

(III) The name of the magistrate or judge and the court division to which the case has been assigned.

Source: L. 87: Entire title R&RE, p. 784, § 1, effective October 1. **L. 92:** (2) amended, p. 1398, § 58, effective July 1. **L. 93:** Entire section amended, p. 389, § 3, effective April 19; (1) amended, p. 2017, § 8, effective July 1. **L. 94:** (1)(b) and (4) amended, p. 2684, § 204, effective July 1. **L. 97:** (5) added, p. 1439, § 14, effective July 1. **L. 99:** (4) amended, p. 911, § 6, effective July 1. **L. 2000:** (1)(b) and (4) amended, p. 476, § 4, effective July 1. **L. 2003:** (1)(b) and (4) amended, p. 2624, § 5, effective June 5. **L. 2004:** (5) amended, p. 972, § 1, effective August 4. **L. 2006:** (2) amended, p. 1404, § 60, effective August 7. **L. 2008:** (4) amended, p. 1894, § 66, effective August 5.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-3-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 93-1058 and Senate Bill 93-28 were harmonized.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (4), see section 1 of chapter 233, Session Laws of Colorado 1999.

ANNOTATION

Law reviews. For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (August 2004).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Dispositional and adjudicatory hearings may be combined. The clear meaning and import of the hearing provisions provide in proper cases that the adjudicatory hearing and the dispositional hearing may be separate hearings, but that also, in a proper case, providing prior notice thereof is given, the dispositional hearing may be had coextensively with the adjudicatory hearing. When the latter alternative is followed, it is necessary that there be presented at the hearing evidence relating to factors which the court must consider before it can make a proper disposition. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The Colorado Children's Code provides for either a combined or bifurcated adjudicatory-dispositional procedure. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

A trial court may not enter a dispositional order without having first entered an order adjudicating the child dependent or neglected. People ex rel. J.L., 121 P.3d 315 (Colo. App. 2005).

Duty of court. Having determined that the child is dependent and neglected, the court has the duty in a dispositional hearing to formulate a remedy which will secure for each child such care and guidance, preferably in his own home,

as will best serve his welfare and the interests of society. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

The juvenile court has the power and the duty to make such determinations as it deems appropriate regarding the custody and care of a child adjudicated to be within its exclusive jurisdiction. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

Interests of child primary issue. The primary and controlling issue in child custody cases is the determination of what will serve the best interests of the child. It applies with greater reason and was clearly meant to apply in proceedings where a child has been declared dependent and neglected. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The Colorado Children's Code does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

But contemplates their participation. While the Colorado Children's Code does not expressly define those persons who may become "parties" to proceedings, it does contemplate the participation of interested third parties. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

The Children's Code expressly contemplates the active participation of "interested parties" at the dispositional hearing. The code does not, however, delineate who is entitled to participate as an interested party. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

The Children's Code expressly contemplates participation of interested parties in juvenile cases. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Includes person furnishing child support pursuant to juvenile court order. Since the juvenile court has the power to compel legally responsible persons to support a child, it necessarily follows that a person furnishing support to a child in accordance with an order of the juvenile court has the right to intervene in a child in need of supervision proceeding as an interested party for the purpose of recovering the cost of that support. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Those having custodial experience with the child have sufficient interest, knowledge, and concern relative to the child to bring them within the classification of "interested parties" and thus they are entitled, upon application, to intervene as a matter of right in the dispositional hearing. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Those who may aid court. Among those who can be considered interested parties are individuals who, because of their relationship with or particular knowledge concerning the child, can materially aid the court in its determination of what in fact is in the child's best interest. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Intervenor in dependency and neglect proceeding only entitled to full participation when the child is not in the parent's custody. Foster parent intervenor could testify regarding the best interests of the child only since the child had returned to the custody of the mother before the hearing. People ex rel. A.W.R., 17 P.3d 192 (Colo. App. 2000).

Foster parents may participate fully in a dispositional hearing, but have only a limited right to provide information at a termination hearing. A foster parent's relationship with a child does not give rise to a constitutionally protected liberty interest at a termination hearing. Without such constitutionally protected liberty interest, a foster parent does not have a constitutional or statutory right that entitles him or her to full participation in a termination hearing. People ex rel. A.M., __ P.3d __ (Colo. App. 2010).

Foster parent does not have constitutionally protected liberty interest in continued relationship with child. Unlike the natural family, foster parents derive their rights from statute and the contractual relationship with the state. People ex rel A.C., __ P.3d __ (Colo. App. 2011).

Grandmother's standing as interested party. While grandmother, who petitioned for custody of children who had been adjudicated dependent and neglected, but who had failed to enter the proceeding in which the adjudication had been made, had no "right" to custody, she had standing as an "interested party" to challenge the court's order granting temporary custody to the county welfare department for the purpose of placing the children for adoption. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Grandmother as petitioner seeking custody. Although joinder of grandmother as a "respondent" in dispositional stage would be inappropriate since such proceedings do not purport to affect any existing legal relationship between her and the children, this, however, does not preclude her from becoming a "party" to such proceedings as a petitioner seeking custody. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Procedural rights. Grandmother's right of participation seeking custody at dispositional stage included the right to be informed by the court of her right of cross-examination, to put on evidence in her own behalf in asserting her fitness for custody, and to receive notice of any subsequent hearings. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Relative who does not make application. Court in the dispositional stage need not give notice to, nor consider the rights of, relatives

who are seeking custody of children adjudicated neglected or dependent, if such relatives have not made timely application. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

In order to terminate parental rights (now parent-child legal relationship), the trial court must find that the condition which results in the determination that the child is dependent and neglected will in all probability continue into the future and the court must further find that under no reasonable circumstances can the welfare of the child be served by a continuation of the parent-child relationship. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Court's failure to conduct a dispositional hearing and approve a new treatment plan after children were adjudicated dependent or neglected did not prejudice mother's ability to preserve her parental rights when court conducted proceeding in substantial compliance with the statutory requirements for termination. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007).

Counsel for children required in petition to terminate parental rights (now parent-child legal relationship). Where the object of an amended petition was to terminate parental rights, it was plain error to proceed to a dispositional hearing in the absence of counsel for the children. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Juvenile court may delegate responsibility for placement of child. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

C.R.C.P. 24 has no application in proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Admission of study with cross-examination satisfies due process. Where parents obtained attendance of authors of social reports admitted in proceeding to adjudge child to be dependent and neglected and to terminate parental rights, and where parents cross-examined each author, admission of such reports did not deny due process to parents. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Common-law hearsay objections as to admissibility of social study are not applicable. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Where this section authorizes consideration of social reports, fact that they may contain hearsay or are prepared by non-experts becomes matter concerning their weight and probative value and not their admissibility. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Waiver of jurisdiction is not final disposition of action. It is evident from the provisions of this section and §§ 19-3-108(4) and 19-3-106 that an order of the juvenile division of the district court waiving jurisdiction is not a final disposition of the action. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Applied in Overturf v. District Court, 198 Colo. 516, 602 P.2d 850 (1979); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-3-508. Neglected or dependent child - disposition - concurrent planning. (1) When a child has been adjudicated to be neglected or dependent, the court may enter a decree of disposition the same day, but in any event it shall do so within forty-five days unless the court finds that the best interests of the child will be served by granting a delay. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall enter a decree of disposition within thirty days after the adjudication and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting the delay. It is the intent of the general assembly that the dispositional hearing be held on the same day as the adjudicatory hearing, whenever possible. If a delay is granted, the court shall set forth the reasons why a delay is necessary and the minimum amount of time needed to resolve the reasons for the delay and shall schedule the hearing at the earliest possible time following the delay. When the proposed disposition is termination of the parent-child legal relationship, the hearing on termination shall not be held on the same date as the adjudication, and the time limits set forth above for dispositional hearings shall not apply. When the proposed disposition is termination of the parent-child legal relationship, the court may continue the dispositional hearing to the earliest available date for a hearing in accordance with the provisions of paragraph (a) of subsection (3) of this section and part 6 of this article. When the decree does not terminate the parent-child legal relationship, the court shall approve an appropriate treatment plan that shall include but not be limited to one or more of the following provisions of paragraphs (a) to (d) of this subsection (1):

(a) The court may place the child in the legal custody of one or both parents or the

guardian, with or without protective supervision, under such conditions as the court deems necessary and appropriate. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2) and is placed with a parent or guardian who is a named respondent in a petition filed pursuant to section 19-3-502, the treatment plan shall include a requirement that the family obtain services specific to the family's needs if available in the community where the family resides and based on the social study and reports provided pursuant to section 19-1-107 (2.5).

(b) The court may place the child in the legal custody of a relative, including the child's grandparent, or other suitable person, with or without protective supervision, under such conditions as the court deems necessary and appropriate. If a child is not placed with a parent pursuant to paragraph (a) of this subsection (1), preference may be given by the court for placement with a grandparent pursuant to this paragraph (b) if in the best interests of the child.

(c) The court may place legal custody in the county department of social services or a child placement agency for placement in a foster care home or other child care facility. When the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(d) (I) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he or she receive other special care and may place the child in a hospital or other suitable facility for such purposes; except that no child may be placed in a mental health facility operated by the department of human services until the child has received a mental health prescreening resulting in a recommendation that the child be placed in a facility for evaluation pursuant to section 27-65-105 or 27-65-106, C.R.S., or a hearing has been held by the court after notice to all parties, including the department of human services. No order for a seventy-two-hour treatment and evaluation shall be entered unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented by a mental health professional which indicates that mental illness is present in the child. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(II) Placement in any facility operated by the department of human services shall continue for such time as ordered by the court or until the professional person in charge of the child's treatment concludes that the treatment or placement is no longer appropriate. If placement or treatment is no longer deemed appropriate, the court shall be notified and a hearing held for further disposition of the child within five days, excluding Saturdays, Sundays, and legal holidays. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(e) (I) Except where the proposed disposition is termination of the parent-child legal relationship, the court shall approve an appropriate treatment plan involving the child named and each respondent named and served in the action. However, the court may find that an appropriate treatment plan cannot be devised as to a particular respondent because the child has been abandoned as set forth in section 19-3-604 (1) (a) and the parents cannot be located, or because the child has been adjudicated as neglected or dependent based upon section 19-3-102 (2), or due to the unfitness of the parents as set forth in section 19-3-604 (1) (b). When the court finds that an appropriate treatment plan cannot be devised, the court shall conduct a permanency hearing as set forth in section 19-3-702 (1), unless a motion for termination of parental rights has been filed within thirty days after the court's finding.

(II) Repealed.

(2) Before a disposition other than that provided in paragraph (a) of subsection (1) of this section is made, it shall be established by a preponderance of the evidence that a separation of the child from the parents or guardian is in the best interests of the child.

(3) (a) The court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to part 6 of this article. Pursuant to section 19-3-602 (1), in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall hear a motion for termination within one hundred twenty days after such motion is filed, and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay in accordance with the requirements of section 19-3-104.

(b) Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the only known parent, the court may:

(I) Vest the county department of social services or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption; or

(II) Make any other disposition provided in paragraph (b), (c), or (d) of subsection (1) of this section that the court finds appropriate.

(b.5) In making a disposition pursuant to paragraph (b) of this subsection (3), the court may give preference to making a disposition as provided in paragraph (b) of subsection (1) of this section, if in the best interests of the child.

(c) Upon the entry of a decree terminating the parent-child legal relationship of one parent, the court may:

(I) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(II) Make any other disposition provided in subsection (1) of this section that the court finds appropriate.

(4) (Deleted by amendment, L. 97, p. 520, § 8, effective July 1, 1997.)

(5) (a) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the court shall give primary consideration to the welfare of the child but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

(b) (I) If the court finds that placement out of the home is necessary and is in the best interests of the child and the community, the court shall place the child with a relative, including the child's grandparent, as provided in paragraph (b) of subsection (1) of this section, if such placement is in the child's best interests. The court shall place the child in the facility or setting that most appropriately meets the needs of the child, the family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107. If the court deviates from the recommendations of the evaluation for placement in a manner that results in a difference in the cost of the disposition ordered by the court and the cost of the disposition recommended in the evaluation, the court shall make specific findings of fact relating to its decision, including the monthly cost of the placement, if ordered. A copy of such findings shall be sent to the chief justice of the supreme court, who shall report annually to the joint budget committee and annually to the health, environment, welfare, and institutions committees of the house of representatives and senate of the general assembly on such orders.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(6) The court may grant a new hearing as provided in the Colorado rules of juvenile procedure.

(7) Efforts to place a child for adoption or with a legal guardian or custodian, including identifying appropriate in-state and out-of-state permanent placement options, may be made concurrently with reasonable efforts to preserve and reunify the family.

Source: L. 87: Entire title R&RE, p. 785, § 1, effective October 1. **L. 91:** (1)(b), (3), and (5)(b) amended, p. 265, § 9, effective May 31. **L. 94:** IP(1), (1)(a), IP(4), and (4)(a) amended, p. 2054, § 7, effective July 1; (1)(d) amended, p. 2685, § 205, effective July 1. **L. 96:** (1)(e)(II) repealed, p. 85, § 11, effective March 20; IP(1) and (1)(c) amended, p. 265, § 17, effective July 1; (5)(b) amended, p. 1246, § 116, effective August 7. **L. 97:** IP(1), (1)(e)(I), and (4) amended, p. 520, § 8, effective July 1; (1)(e)(I) and (5)(b) amended, pp. 1439, 1441, §§ 15, 18, effective July 1. **L. 98:** (1)(e)(I) amended and (7) added, p. 1418, § 5, effective July 1. **L. 99:** (1)(e)(I) amended, p. 912, § 7, effective July 1. **L. 2001:** (2) amended, p. 847, § 9, effective June 1. **L. 2003:** (1)(c) and (5)(b) amended, p. 2625, § 6, effective June 5; IP(1) and (3)(a) amended, p. 1225, § 1, effective August 6. **L. 2007:** (7) amended, p. 1018, § 8, effective May 22. **L. 2010:** (1)(d)(I) amended, (SB 10-175), ch. 188, p. 793, § 46, effective April 29.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1)(e)(I) by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

(3) Although subsection (7) refers to the term "custodian", reference to the term "custody", and related terms, have been changed in other places in the Colorado Revised Statutes to correspond with the use of the term "parental responsibilities" as described in § 14-10-124, C.R.S.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (5)(b), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 1999 act amending subsection (1)(e)(I), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending subsection (2), see section 1 of chapter 241, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For article, "Workmen's Compensation, Attorneys and Family Law", see 31 Dicta 1 (1954). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For note, "Enforcement of Support Duties in Colorado", see 33 Rocky Mt. L. Rev. 70 (1960). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For note, "In re Gault and the Colorado Children's Code", see 44 Den. L. J. 644 (1967). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Colorado Residential Child Care Facilities: A Plea for Adequate Funding", see 13 Colo. Law. 2241 (1984). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Parts I and II", see 14 Colo. Law. 568 and 794 (1985). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) A number of the cases annotated below were decided prior to the 1977 amendment changing the term "parental rights" to "parent-child legal relationship".

This section was enacted with an understanding and appreciation of societal interest in maintaining and protecting the natural parents' interests in the child, and those of the child in the parent, absent parental acts or omissions sufficiently harmful to the child to mandate a forfeiture of those rights. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Parental rights are personal between each parent and child. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

The Colorado Children's Code does not recognize difference between deprivation of parental custody and termination of parental rights. The Children's Code does not by its language clearly recognize the substantial difference between deprivation of parental custody and termination of parental rights. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

Section 19-1-109 (2)(c) is not meant to delay permanent placement decisions while ap-

peals of dependency and neglect orders are litigated. Section 19-1-109 (2)(c) provides the trial court with continuing jurisdiction to enter further permanent custody orders under § 19-3-702 if it furthers the child's best interests, even if those orders are entered after the order adjudicating the child dependent or neglected is appealed. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Power of court over custody. The court and not the probation officer prescribes and determines what the terms and conditions are under which the child shall be maintained by its custodian, and to make the same specific in its order or judgment. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Criminal sanctions not provided. In a hearing to determine if a child is neglected or dependent, there is no fine or confinement to a state institution nor any other criminal sanctions. These are not criminal proceedings. The state is in the position of parens patriae, and the matter for determination is what will serve the best interests of the child. This is the rule which prevails in Colorado and elsewhere in child custody cases. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

No standards or guidance in selecting alternative dispositions. This section provides alternative methods of disposition for children adjudicated neglected and dependent, but other than directing the court to operate in the best interests of the child, the Colorado Children's Code establishes no standards and provides no guidance to the courts in choosing between these alternatives. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Although this section provides alternative methods of disposition, the Children's Code, as a whole, does not establish standards and guidelines to assist the courts in choosing between alternatives. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

The court does not lack subject matter jurisdiction to declare a child dependent and neglected if the act of abuse took place outside the state. Neither the Uniform Child Custody Jurisdiction Act nor the Colorado Children's Code requires that acts of abuse take place in Colorado in order to allow the state to protect an abused child who is within the state's borders. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Under subsection (1) if a child is adjudicated dependent or neglected and if the decree does not terminate the parent-child legal relationship, the court must designate legal custody of the child. Such legal custody may be placed in one of the parents. People in Interest of R.E., 721 P.2d 1233 (Colo. App. 1986).

Interest and welfare of child is controlling question. Every child is under the control of the state, and even the paternal right to its custody and control must yield to the interests and welfare of the child, and the paramount and controlling question by which courts must be guided in proceedings affecting the custody of the infant is the interest and welfare of the child. People ex rel. Flannery v. Bolton, 27 Colo. App. 39, 146 P. 489 (1915); McKercher v. Green, 13 Colo. App. 270, 58 P. 406, (1899); Wilson v. Mitchell, 48 Colo. 454, 111 P. 21 (1910); Breene v. Breene, 51 Colo. 342, 117 P. 1000 (1911); People ex rel. Broxholm v. Parks, 57 Colo. 458, 141 P. 994 (1914); Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954); Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The desires and wishes of the parent become subordinate to the court's determination as to what order of custody will be for the dependent child's best interest. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Under the Colorado Children's Code, parties are precluded from stipulating restrictions upon court's duty to protect best interests of child. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972); People in Interest of G.K.H., 698 P.2d 1386 (Colo. App. 1984).

The paramount consideration of a disposition is the best interests of the child with due consideration being given to the past history of the child while in the custody of the parent or guardian. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973); People in Interest of R.E., 721 P.2d 1233 (Colo. App. 1986).

In providing for a child found to be dependent or neglected, the focus is the best interests of that child. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Observance of parents' wishes as to religious training. The wishes of the parent as to the religious training of the child are subordinated to the controlling consideration of the child's welfare. People ex rel. Flannery v. Bolton, 27 Colo. App. 39, 146 P. 489 (1915).

Application of res judicata. A voluntary dismissal pursuant to an invalid stipulation is not a decision to which the doctrine of res judicata applies to preclude a subsequent action in dependency or neglect. People in Interest of G.K.H., 698 P.2d 1386 (Colo. App. 1984).

The court must hold a dispositional hearing and consider an appropriate treatment plan at the time or within 45 days of declaring the child dependent or neglected before terminating parental rights. People ex rel. D.R.W, 91 P.3d 453 (Colo. App. 2004).

Court did not err by holding a contemporaneous dispositional and termination hearing. Because father received a hearing and an opportunity to litigate the issue as to whether no treatment plan could be devised for him because of his unfitness, the proceedings were in substantial compliance with the statutory scheme.

People ex rel. T.L.B., 148 P.3d 450 (Colo. App. 2006).

When rights may be terminated. A parent's rights may be terminated only as part of a corrective program and then only when the continuation of the parent-child relationship will obstruct the other measures taken by the court for the child's benefit. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

In order to terminate parental rights, the trial court must find that the condition which results in the determination that the child is dependent and neglected will in all probability continue into the future and the court must further find that under no reasonable circumstances can the welfare of the child be served by a continuation of the parent-child relationship. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

In order to declare child neglected or dependent as a preliminary to separating him from his parents or custodians, the evidence must clearly establish its necessity, and state intervention should be limited to instances of neglect and dependency as defined in the Colorado Children's Code. People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979).

Former standard for termination of parental rights was "best interests and welfare of child". People in Interest of C.S., 200 Colo. 213, 613 P.2d 1304 (1980); People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Standard set forth in former subsection (2)(a) is not unconstitutionally vague and overbroad. People in Interest of C.S., 200 Colo. 213, 613 P.2d 1304 (1980).

Circumstances dictating termination of parental rights. Termination of parental rights following a determination of dependency and neglect should result only where there is a history of severe and continuous neglect by the particular parent whose rights are sought to be terminated, a substantial probability of future deprivation, and a determination that under no reasonable circumstances can the welfare of the child be served by a continuation of the legal relationship of the child with that parent. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

A decree may terminate all parental rights of one or both parents in the child, but such an order must be based upon a finding of: (1) Severe and continuous neglect by the particular parent whose rights are at issue; (2) a substantial probability of continued deprivation; and (3) a determination that under no reasonable circumstances can the welfare of the child be served by a continuation of the legal relationship of the child with that parent. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The "best interest and welfare of the child" standard was met only when it is shown that: (1) there has been a history of severe and continuous neglect by the parent whose rights are sought to be terminated; (2) there is a substantial probability of future deprivation; and (3) under no reasonable circumstances can the welfare of the child be served by a continuation of the legal relationship of the child with the parent. People in Interest of C.S., 200 Colo. 213, 613 P.2d 1304 (1980).

Fact insufficient to terminate rights. That the ongoing relationship of parent and child may not presently be a positive factor in the child's environment or development is insufficient, in and of itself, to warrant termination of parental rights in a dependency proceeding. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The possible rehabilitation of the parent is a matter which must be considered in a dependency proceeding in determining whether the parental relationship should be ended. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Adjudications of neglect or dependency are not made "as to" the parents, but rather relate only to the status of the child. People in Interest of P.D.S., 669 P.2d 627 (Colo. App. 1983).

To permit adjudication of dependency and neglect on basis of non-custodial parent's admission that child was not domiciled with her through no fault of her own where finder of fact has determined that child was not dependent and neglected would produce an absurd result and contravene the purposes of this title. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

Petition in dependency may not be used to punish parent. A petition in dependency may only be used to correct and improve the situation of the child, and may not be used to punish a parent for his alleged poor behavior by terminating his parental rights. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A proceeding to determine whether a child is, in fact, dependent or neglected is not designed to punish his parent or parents but is merely an attempt to determine if, at the time of adjudication, he does not, for whatever reason, have the benefit of parental guidance, concern, protection, or support to which he is entitled. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A petition in dependency may not be converted into a proceeding for stepparent adoption by the actions either of the parties, the referee, or the trial court. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

An action in dependency may not be used as a means of making a child available for adoption in a stepparent adoption proceeding. Such tactic is inappropriate and contrary to the statutory language as well as the legislative intent of the Colorado Children's Code. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Procedures are not interchangeable. Since a petition in dependency concerns different matters and fulfills a different purpose than a proceeding for a stepparent adoption, procedures applicable to one may not be used to accomplish the ends of the other. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Adoption proceeding distinguished. The question of abandonment is one of the elements involved in adoption proceedings, but that does not change adoption proceedings to an abandonment proceeding under this section. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Court is not free to delegate its initial responsibility of electing between alternative dispositions provided by the Colorado Children's Code. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Court may ultimately delegate responsibility of placing children for adoption to the welfare department. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

At which point it is not wise for court to interfere. Once the final selection of disposition has been made by the court and custody has been placed in the welfare department for adoption purposes, it is not wise for the court to interfere with the adoption process, even though the court has the power to do so. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Duty of court, aided by welfare department. It is the court which has the original and exclusive jurisdiction, and the duty, to adjudicate whether a child is dependent and neglected, to determine whether it is in the best interest of the child to terminate the legal relationship with the child's parents, and to make such further disposition as deemed necessary. If so requested by the court, it is the function of the welfare department to aid the court in the court's pursuit of its obligations. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Authority of welfare department. Inasmuch as the general assembly has granted the court exclusive jurisdiction over adoptions, has expressly authorized adoptive placement, and has given the court the final and sole responsibility of approving or disapproving adoptions, it would be totally inconsistent to conclude that the welfare department or licensed placement agencies are the sole entities authorized to place a child for adoption following termination of parental rights (now parent-child legal relationship). People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

No termination for "constructive" abandonment. The general assembly has not provided for the termination of parental rights on the ground of "constructive" abandonment. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

Implicit in each of options under this section is continuing jurisdiction of court entering the decree to supervise the custodian as well as the child. People in Interest of C.A.K., 628 P.2d 136 (Colo. App. 1980), rev'd on other grounds, 652 P.2d 603 (Colo. 1982).

Termination of parental rights supported by evidence. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969); In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Decree terminating parental rights to a child not upheld. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

Requirement that the court order an appropriate treatment plan implicitly authorizes the court to issue such orders as are reasonably necessary to implement that mandate. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Protective orders were properly issued when confined to the reasonably necessary relief to promote the therapeutic objectives of the treatment plans, where no protection was provided for disclosure of plans for future criminal conduct or past criminal conduct not related to the treatment plans, and where communications between therapists and children and between the therapists and parents who had not engaged in sexually abusive conduct were not protected. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Treatment plan. Nothing in subsection (1)(e)(I) grants a court the power to impose a treatment plan on a parent when the child has not been found to be dependent and neglected by that parent. People ex rel. U.S., 121 P.3d 326 (Colo. App. 2005).

The court properly ordered a treatment plan compelling action by father even though the jury verdict, which formed part of the basis for the ultimate order, did not expressly find that the father had committed an act of abuse. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Where jury had found the child to be dependent and neglected as to the father, but had not found that the father had subjected the child to "mistreatment or abuse", the juvenile court had the discretion to order a treatment plan that required the father to be evaluated and possibly treated for sexual aggression. People in Interest of C.L.S., 934 P.2d 851 (Colo. App. 1996).

The approval of a treatment plan which addresses the placement of a minor child following an adjudication of dependency and neglect constitutes a disposition and renders the adjudication final for purposes of appeal. People in Interest of B.M., 738 P.2d 45 (Colo. App. 1987).

Joint custody is a placement alternative under this section. People in Interest of A.A.G.,

902 P.2d 437 (Colo. App. 1995), aff'd in part and rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

The appropriateness of a treatment plan must be measured against the factors which existed at the time of adoption of the plan and must be evaluated by its likelihood of success in reuniting the family. People in Interest of C.S.M., 805 P.2d 1129 (Colo. App. 1990).

The fact that a plan is not ultimately successful does not mean that it was therefore inappropriate. People in Interest of A.G.G., 899 P.2d 319 (Colo. App. 1995).

Parent's irremediable conduct at a dispositional hearing negates requirement that the court devise a treatment plan since such plan would be doomed to failure and would contravene the purposes of the Colorado Children's Code. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Nine-month period between the adoption of an appropriate treatment plan and the hearing to terminate parental rights was a reasonable amount of time for the mother to attempt to comply with the treatment plan. People in Interest of T.S.B., 757 P.2d 1112 (Colo. App. 1988), aff'd, 785 P.2d 132 (Colo. 1990).

Termination of parental rights supported by evidence. People in Interest of A.H., 736 P.2d 427 (Colo. App. 1987); People in Interest of C.R., 772 P.2d 672 (Colo. App. 1989).

An adjudication of dependency and neglect becomes final for purposes of appeal upon disposition. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

Subsection (1)(e) must be read in pari materia with § 19-3-604 (1)(b) since they are part of the same code and pertain to the same subject. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Applied in People in Interest of H.A.C. v. D.C.C., 198 Colo. 260, 599 P.2d 881 (1979); Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979); People in Interest of B.W., 43 Colo. App. 235, 626 P.2d 742 (1981); People in Interest of E.A., 638 P.2d 278 (Colo. 1981); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People v. Coyle, 654 P.2d 815 (Colo. 1982); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

PART 6

TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP

Law reviews: For article, "Difficult Issues in Adoption - Part 1", see 24 Colo. Law. 851 (1994); for article, "Difficult Issues in Adoption - Part 2", see 24 Colo. Law. 1083 (1994).

19-3-601. Short title. This part 6 shall be known and may be cited as the "Parent-Child Legal Relationship Termination Act of 1987".

Source: L. 87: Entire title R&RE, p. 787, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

There is no statutory authority for a guardian ad litem to exercise "protective supervision" over one or both parents pursuant to subsection (1)(a). People ex rel. E.D., 221 P.3d 65 (Colo. App. 2009).

19-3-602. Motion for termination - separate hearing - right to counsel - no jury trial. (1) Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501

(2), the court shall hear the motion for termination within one hundred twenty days after such motion is filed, and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay in accordance with the requirements of section 19-3-104.

(1.5) (a) Pursuant to the provisions of section 19-1-126, the motion for termination shall:

(I) Include a statement indicating what continuing inquiries the county department of social services has made in determining whether the child who is the subject of the termination proceeding is an Indian child;

(I.5) Include a statement indicating that a grandparent, aunt, uncle, brother, or sister of the child must file a request for guardianship and legal custody of the child within twenty days of the filing of the motion;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts, or copies thereof, shall be attached to the motion for termination and filed with the court or filed within ten days after the filing of the motion for termination, as specified in section 19-1-126 (1) (c).

(2) After a motion for termination of a parent-child legal relationship is filed pursuant to this part 6, the parent or parents shall be advised of the right to counsel if not already represented by counsel of record; and counsel shall be appointed in accordance with the provisions of section 19-1-105. The parent or parents shall also be advised that a grandparent, aunt, uncle, brother, or sister of the child must file a request for guardianship and legal custody of the child within twenty days of the filing of the motion. Advisement of right to counsel and the time for a relative to file a request may be done in open court or in a writing served as provided by law for motions and notices in a proceeding under section 19-1-104 (1) (b).

(3) A guardian ad litem, who shall be an attorney and who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

(4) There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 2002:** (1.5) added, p. 787, § 7, effective May 30. **L. 2003:** (1) amended, p. 1226, § 2, effective August 6. **L. 2005:** (1.5)(a)(I.5) added and (2) amended pp. 94, 93, §§ 3, 2, effective March 31.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For comment, "Lassiter v. Department of Social Services: Due Process Takes an Ad Hoc Turn — What's a Parent to Do?", see 59 Den. L.J. 591 (1982). For casenote, "People in Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I",

see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (November 2002).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Termination of parental rights is a drastic remedy. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

Such remedy will not be imposed unless all the conditions of this section are met. Where the state failed to file a written motion thirty days prior to the hearing, there was no compliance with the statute. People in Interest of C.L.S., 705 P.2d 1026 (Colo. App. 1985).

When the state seeks to terminate the relationship between a parent and child, it must comply with the due process clause, which requires a fundamentally fair procedure. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

For procedural due process purposes, fairness is assessed by application of the three-factor test set forth in Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), which requires consideration of three distinct factors: (1) The private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the state interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Issue of notice and pleading of constitutional proportions. Even if an allegation in a mother's motion for a new trial after the termination of her parental rights in her child was inadequate to raise the issue of adequacy of notice and pleading in a juvenile proceeding, it is of constitutional proportions, and the court of appeals is obliged to address the issue on its merits. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

Due process requires notice of hearing. Despite the fact that this section contains no notice requirement, due process requires that a parent receive adequate notice of a termination hearing and an opportunity to protect his interests at the hearing. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Absence of notice provision in statute does not violate due process. Where parent had been given adequate notice of the hearing, the absence of a notice provision in the statute is not a violation of due process. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

When basis for delay is apparent from the record and parents did not object, trial court's failure to make express findings that there was good cause for delay not error. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007); People ex rel. D.M., 186 P.3d 101 (Colo. App. 2008).

The statutory time in which to conduct a termination hearing is not jurisdictional; therefore, parents' failure to raise the issue in the trial court precludes relief on appeal. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007).

Failure to hold a hearing within 120 days does not warrant reversal because the statutory time in which to conduct a termination hearing is not jurisdictional. People ex rel. D.M., 186 P.3d 101 (Colo. App. 2008).

Section does not require court to appoint counsel, sua sponte, for any parent who does not have counsel at the time that a motion to terminate parental rights is filed. People in Interest of V.W., 958 P.2d 1132 (Colo. App. 1998).

In determining whether an indigent parent has the right to appointed counsel in a termination proceeding resulting from a dependency and neglect adjudication, a court is to consider whether (1) the parent's interest is an extremely important one; (2) the state shares with the parent an interest in a correct decision, has a relatively weak pecuniary interest, and, in some but not all cases, has a possibly stronger interest in informal procedures; and (3) the complexity of the proceeding and the incapacity of the uncounselled parent could be, but would not always be, great enough to make the risk of an erroneous deprivation of the parent's rights insupportably high. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

These factors should be considered to resolve parent's due process argument in a stepparent adoption proceeding. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

The decision whether due process calls for the appointment of counsel for indigent parents in stepparent adoption proceedings must be answered in the first instance by the trial court, subject to appellate review. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

Father not denied due process by the court's failure to appoint counsel for him when father concedes that he received written notice of the right to counsel both at the commencement of the dependency and neglect case and when the motion to terminate was filed and concedes that he earned too much money to qualify for state-paid counsel under judicial guidelines but complains that he should have received an application form to establish

indigency after the motion to terminate was filed; rather, it was father's duty to request indigency status again, if he so desired. People ex rel. M.C., 94 P.3d 1220 (Colo. App. 2004).

This section does not violate the requirement of equal protection of the laws by requiring appointment of a guardian ad litem for a minor parent but not for a mentally disabled parent. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

C.R.C.P. 56 is applicable in a termination of parental rights proceeding under the Colorado Children's Code. Because termination of the parent-child relationship is a drastic remedy that affects a parent's liberty interest, a court deciding a summary judgment motion seeking to terminate parental rights must apply the standard of clear and convincing evidence to the applicable statutory criteria. People in Interest of A.E., 914 P.2d 534 (Colo. App. 1996).

Service requirements of C.R.C.P. 5(d) apply to motion for termination of parental rights. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

The context of subsection (3) requires that "minor" be defined as a person 18 years of age or older. Defining "minor" in subsection (3) as a person under the age of 21 would be inconsistent with § 13-22-101 and the definitions of "child" and "adult" in the Colorado Children's Code. People ex rel. L.A.C., 97 P.3d 363 (Colo. App. 2004).

The definition of a "minor" in § 2-4-401 (6) is not applicable in subsection (3) of this section because "the context otherwise requires". People ex rel. L.A.C., 97 P.3d 363 (Colo. App. 2004).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of P.N., 663 P.2d 253 (Colo. 1983); People in Interest of M.H., 683 P.2d 807 (Colo. App. 1984); People in Interest of L.L., 715 P.2d 334 (Colo. 1986).

19-3-603. Notice - abandonment. Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file, only if the location of a parent remains unknown, an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 97:** Entire section amended, p. 521, § 9, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Guardian ad litem may file the motion to terminate the parent-child legal relationship as guardian of the child's best interests even though the state is the exclusive party to bring a petition in dependency and neglect. People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997).

Applied in People in Interest of K.C., 685 P.2d 1377 (Colo. App. 1984).

19-3-604. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following:

(a) That the child has been adjudicated dependent or neglected and has been abandoned by the child's parent or parents as follows:

(I) That the parent or parents have surrendered physical custody of the child for a period of six months or more and have not manifested during such period the firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child except in cases when voluntary placement is renewable under section 19-1-115 (8) (a);

(II) That the identity of the parent of the child is unknown and has been unknown for three months or more and that reasonable efforts to identify and locate the parent in accordance with section 19-3-603 have failed;

(b) That the child is adjudicated dependent or neglected and the court finds that no

appropriate treatment plan can be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

(I) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child;

(II) A single incident resulting in serious bodily injury or disfigurement of the child;

(III) Long-term confinement of the parent of such duration that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the long-term confinement of the parent of such duration that the parent is not eligible for parole for at least thirty-six months after the date the child was adjudicated dependent or neglected and the court has found by clear and convincing evidence that no appropriate treatment plan can be devised to address the unfitness of the parent or parents;

(IV) Serious bodily injury or death of a sibling due to proven parental abuse or neglect;

(V) An identifiable pattern of habitual abuse to which the child or another child has been subjected and, as a result of which, a court has adjudicated another child as neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such abuse has caused the death of another child;

(VI) An identifiable pattern of sexual abuse of the child; or

(VII) The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent;

(c) That the child is adjudicated dependent or neglected and all of the following exist:

(I) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent or parents or has not been successful or that the court has previously found, pursuant to section 19-3-508 (1) (e), that an appropriate treatment plan could not be devised. In a county designated pursuant to section 19-1-123, if a child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), no parent or parents shall be found to be in reasonable compliance with or to have been successful at a court-approved treatment plan when:

(A) The parent has not attended visitations with the child as set forth in the treatment plan, unless good cause can be shown for failing to visit; or

(B) The parent exhibits the same problems addressed in the treatment plan without adequate improvement, including but not limited to improvement in the relationship with the child, and is unable or unwilling to provide nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions despite earlier intervention and treatment for the family. The court may receive testimony regarding the family's progress under the treatment plan from the child's physician or therapist, foster parent, educational or religious teachers, CASA volunteer, or caseworker.

(II) That the parent is unfit; and

(III) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(2) In determining unfitness, conduct, or condition for purposes of paragraph (c) of subsection (1) of this section, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious bodily injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care to include, at a minimum, nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions. In making such determinations, the court shall consider, but not be limited to, the following:

(a) Any one of the bases for a finding of parental unfitness set forth in paragraph (b) of subsection (1) of this section;

(b) Conduct towards the child of a physically or sexually abusive nature;

(c) History of violent behavior;

(d) A single incident of life-threatening or serious bodily injury or disfigurement of the child;

(e) Excessive use of intoxicating liquors or controlled substances, as defined in section 18-18-102 (5), C.R.S., which affects the ability to care and provide for the child;

(f) Neglect of the child;

(g) Injury or death of a sibling due to proven parental abuse or neglect, murder, voluntary manslaughter, or circumstances in which a parent aided, abetted, or attempted the commission of or conspired or solicited to commit murder of a child's sibling;

(h) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents;

(i) That any parent who is a named respondent in the termination proceeding has had prior involvement with the department of human services concerning an incident of abuse or neglect involving the child and a subsequent incident of abuse or neglect occurs;

(j) Whether a parent committed felony assault that resulted in serious bodily injury to the child or to another child of the parent;

(k) That the child has been in foster care under the responsibility of the county department for fifteen of the most recent twenty-two months, unless:

(I) The child is placed with a relative of the child;

(II) The county department or a state agency has documented in the case plan, which shall be available for court review, that filing such a motion would not be in the best interests of the child;

(III) Where required to make reasonable efforts, services identified as necessary for the safe return of the child to the child's home have not been provided to the family consistent with the time period in the case plan; or

(IV) The child has been in foster care under the responsibility of the county department for such period of time due to circumstances beyond the control of the parent such as incarceration of the parent for a reasonable period of time, court delays or continuances that are not attributable to the parent, or such other reasonable circumstances that the court finds are beyond the control of the parent;

(l) Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected in a proceeding under this article or comparable proceedings under the laws of another state or the federal government;

(m) Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated pursuant to this article or section 19-5-105 or comparable proceedings under the laws of another state or the federal government.

(3) In considering the termination of the parent-child legal relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. For the purpose of determining termination of the parent-child legal relationship, written reports and other materials relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or any other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child so requires.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 90:** (1)(a) amended, p. 1037, § 5, effective April 3. **L. 91:** (1)(a)(I) amended, p. 1159, § 5, effective July 1. **L. 92:** (3) amended, p. 224, § 11, effective July 1. **L. 94:** (1) and IP(2) amended and (2)(i) added, p. 2055, § 8, effective July 1. **L. 97:** IP(1) and (1)(b) amended, p. 521, § 10, effective July 1; (1)(b) amended, p. 1440, § 16, effective July 1. **L. 98:** (1)(b), IP(2), (2)(d), and (2)(g) amended and (2)(j) and (2)(k) added, pp. 1419, 1420, §§ 6, 7, effective July 1. **L. 2001:** (2)(l) and (2)(m) added, p. 499, § 1, effective May 4; (1)(b)(V) and (1)(b)(VI) amended and (1)(b)(VII) added, p. 847, § 10, effective June 1. **L. 2003:** (1)(c)(I)(B) amended, p. 754, § 6, effective March 25. **L. 2008:** (1)(a)(I) amended, p. 1894, § 67, effective August 5. **L. 2012:** (2)(e) amended, (HB 12-1311), ch. 281, p. 1625, § 61, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-11-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments made to subsection (1)(b) by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

Cross references: For the legislative declaration contained in the 2001 act amending subsections (1)(b)(V) and (1)(b)(VI) and enacting subsection (1)(b)(VII), see section 1 of chapter 241, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For casenote, "People in the Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part II", see 14 Colo. Law. 794 (1985). For article, "Colorado's Implementation of the Federal Adoption and Safe Families Act", see 28 Colo. Law. 73 (March 1999). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (August 2004).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section not violative of equal protection. Where lack of an extended family or financial resources were not factors in termination and where termination is based on a parent's failure or inability to comply with a treatment plan, parental unfitness, and unlikelihood of change in the future, a termination of parental rights is not violative of equal protection under the law. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Subsection (1)(b)(III) does not violate due process. The court recognizes that a parent has a fundamental right in the care, custody, and management of a child. The state has a compelling interest to assure that a Colorado child is neither neglected nor dependent, and that a stable home atmosphere exists for the child. Therefore, if a parent cannot provide such an environment within a reasonable time, the state has a compelling interest in terminating the rights of the parent. People in Interest of E.I.C., 958 P.2d 511 (Colo. App. 1998).

Statute does not violate equal protection clause rights of mentally ill parents because parental rights of such parents are not terminable on the basis of mental illness alone. People in Interest of C.B., 740 P.2d 11 (Colo. 1987).

Section not violative of due process. This section is sufficiently definite to provide notice of the conduct or conditions upon which termination of the relationship can be predicated, adequately minimizes the potential for arbitrary and discriminatory application, and gives the courts sufficient guidelines to enable them to apply the law consistently and in accord with legislative intent, and therefore does not violate due process of law. People in Interest of M.S.H., 656 P.2d 1294 (Colo. 1983).

Subsection (1) is permissive with court. The court is granted discretion in making its decision to terminate parental rights. People in Interest of K.C., 685 P.2d 1377 (Colo. App. 1984).

A motion to terminate is sufficient so long as it is couched in the statutory language set forth in subsection (1). People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

A written adjudicatory order, a minute order reflecting the approval of a treatment plan, and a copy of the treatment plan are sufficient to establish for purposes of subsection (1)(c) that the children were adjudicated dependent or neglected. That the adjudicatory order did not become appealable until the judgment of termination was entered does not undermine or affect either its validity or its probative value. People ex rel. J.M., 74 P.3d 475 (Colo. App. 2003).

The requirements of subsection (1)(c) are not jurisdictional. The court's failure to enter adjudicatory order was not an error affecting the court's jurisdiction to enter termination order. Mother admitted the child was dependent and neglected, the court accepted that admission, and mother voluntarily participated in the termination proceedings without objecting to the absence of an adjudicatory order, thereby waiving any procedural error arising from subsection (1)(c). People ex rel. N.D.V., 224 P.3d 410 (Colo. App. 2009).

The term "reasonable parental care" is not too indefinite to satisfy constitutional standards. This term must be interpreted in light of the specific factors in subsection (2) which the court is directed to consider in determining whether a parent is unwilling or unable to give a child reasonable parental care. People in Interest of M.S.H., 656 P.2d 1294 (Colo. 1983).

Termination of parental rights is a decision of paramount gravity, and the state must exercise extreme caution in terminating such rights. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

Termination is an unfortunate but necessary remedy when all reasonable means of establish-

ing a satisfactory parent-child relationship have been tried and found wanting. It is not a desired outcome for which the state should strive from the inception of a dependency or neglect proceeding. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

Strict compliance with termination standards required. Strict compliance by the trial court with the appropriate standards for termination of a parent-child relationship is an absolute necessity. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

This section sets forth the criteria for termination of the parent-child legal relationship and such criteria does not require a child to be removed from her parents' home prior to the termination of such relationship. People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

The court must hold a dispositional hearing and consider an appropriate treatment plan at the time or within 45 days of declaring the child dependent or neglected before terminating parental rights. People ex rel. D.R.W, 91 P.3d 453 (Colo. App. 2004).

Consideration of alternatives to termination. A trial court must consider and eliminate less drastic alternatives to termination of the parent-child relationship. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002); People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

If a trial court's findings conform to the statutory criteria for termination and are adequately supported by evidence in the record, a reviewing court may presume that, in the absence of any indication in the record to the contrary, the trial court considered and eliminated less drastic alternatives to termination. People in Interest of M.M., 726 1108 (Colo. 1986); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Subsection (1) does not require that the court explicitly consider "less drastic alternatives" before ordering termination, and court's termination order concluding that the child had been adjudicated dependent and neglected, that the parent had not complied with and could not comply with the approved treatment plan, that the parent was an unfit parent, and that her condition was unlikely to change within a reasonable time was sufficient to conform to termination requirements of this section, and a reviewing court may presume that, in the absence of any indication in the record to the contrary, the trial court considered and eliminated less drastic alternatives. C.S. v. People, 83 P.3d 627 (Colo. 2004).

No error where court failed to consider placement of children with paternal grandparents. Although the department must evaluate a reasonable number of persons identified by the parents as possible placement alternatives, it has no obligation to independently identify and evaluate other placement alternatives. People ex rel. Z.P., 167 P.3d 211 (Colo. App. 2007).

To support termination of the parent-child relationship pursuant to subsection (1), the evidence must establish that: (1) The child has been adjudicated dependent or neglected; (2) an appropriate treatment plan, approved by the court, has not been complied with by the parent or has not been successful; (3) the parent is unfit; and (4) the parent's conduct or condition is unlikely to change within a reasonable time. People ex rel. A.N.W., 976 P.2d 365 (Colo. App. 1999); People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005); People ex rel. N.A.T., 134 P.3d 535 (Colo. App. 2006); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

In determining whether a parent's conduct or condition is unlikely to change within a reasonable time, a trial court may consider whether any change has occurred during the pendency of the dependency and neglect proceeding, the parent's social history, and the chronic or long-term nature of the parent's conduct or condition. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

A reasonable time is not an indefinite time, and it must be determined by considering the physical, mental, and emotional conditions and needs of the child. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

Appellate court will presume that the trial court considered less drastic alternatives prior to ordering termination of mother's parental rights, where criteria for termination and findings made pursuant to those criteria were supported by clear and convincing evidence. People in Interest of D.M.W., 752 P.2d 587 (Colo. App. 1987).

Standards for burden of proof meeting due process requirements. Due process of law is accorded to the parties to a termination of parental rights proceeding when the grounds for termination under this section are established by clear and convincing evidence and the underlying dependency or neglect determination is established by a preponderance of the evidence. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of L.L., 715 P.2d 334 (Colo. 1986).

Sole purpose of a treatment plan is to reunite a parent and child in the kind of relationship which will be beneficial to both, under conditions which are designed to eliminate those factors which necessitated society's intrusion into the family in the first instance. Thus, the appropriateness of such a plan can only be measured by examining the likelihood of its success

in accomplishing this purpose. People in Interest of B.J.D., 626 P.2d 727 (Colo. App. 1981); People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985); People in Interest of J.R., 711 P.2d 701 (Colo. App. 1985).

The purpose of a treatment plan is to preserve the parent-child relationship, whenever possible, by assisting the parent in overcoming those problems which led to the dependency adjudication. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Appropriateness of treatment plan. The appropriateness of a treatment plan must be evaluated by examining the likelihood of success in accomplishing its purpose. The fact that the plan is not successful does not mean that it was inappropriate. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Although the treatment plan did not at its inception specifically address father's mental health needs, by acquiescing in the plan father is precluded from arguing that it was not appropriate. People ex rel. M.S., 129 P.3d 1086 (Colo. App. 2005).

It is incumbent on the parent to bring forth any known deficiencies in the treatment plan prior to the termination hearing. People ex rel. M.S., 129 P.3d 1086 (Colo. App. 2005).

Father's acquiescence to his treatment plan at the dispositional hearing, and his subsequent failure to object to the services supporting the reasonable efforts to rehabilitate him, may not be used to bar appellate review of the evidence supporting the juvenile court's finding that the county department of human services proved by clear and convincing evidence that reasonable efforts were unsuccessful in rehabilitating father. People ex rel. S.N-V., __ P.3d __ (Colo. App. 2011).

Parent's failure to persist in his or her request for a full neuropsychological evaluation prior to the termination hearing did not estop him or her from challenging on appeal the adequacy of the juvenile court's finding as to the reasonable efforts to rehabilitate him or her. People ex rel. S.N-V., __ P.3d __ (Colo. App. 2011).

Respondent parent's position regarding his or her treatment plan at the time of its adoption, or at any point thereafter prior to the termination hearing, is not equivalent to, or a substitute for, a juvenile court's finding at the termination hearing by clear and convincing evidence that the services provided to the respondent parent were appropriate but unsuccessful in rendering him or her a fit parent. People ex rel. S.N-V., __ P.3d __ (Colo. App. 2011).

Treatment plan represents an affirmative attempt by the state to preserve the parent-child relationship whenever possible. People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982).

Questions concerning a child's health and safety are purview of trial court, which retains ultimate decision-making authority in the case. The trial court itself must make decisions regarding visitation and may not delegate this function to third parties. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

Prior to 1984, termination without formulation of treatment plan not permitted. The requirement of an "appropriate" treatment plan in subsection (1)(b)(I) did not signify a legislative intent to permit the termination of a parent-child relationship without formulating any treatment plan. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

Criteria for judging success of treatment plan. A treatment plan can only be judged to be successful if it results in rendering the parent fit or if it corrects the conduct or condition which led to intervention by the state into the parent-child relationship. Accordingly, no explicit criteria to determine success need be included in the treatment plan itself. People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of M.P., 690 P.2d 1300 (Colo. App. 1984).

The standards to be applied in evaluating the results of a treatment plan are those contained in the Colorado Children's Code. If the plan improves conditions or corrects unfit parental conduct, it will be judged successful. Explicit criteria for success need not be included in the treatment plan itself. People ex rel. L.D., 671 P.2d 940 (Colo. 1983); People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985).

Treatment plan required even though parent incarcerated. The fact that a particular parent is incarcerated at the time of an adjudication of dependency or neglect may often render more difficult the crafting of a meaningful and workable treatment plan. However, such single circumstance does not per se prohibit the creation and implementation of a treatment program appropriate for the goal the general assembly has indicated it should achieve — the building or rebuilding of a healthy parent-child relationship. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982); People in Interest of E.I.C., 958 P.2d 511 (Colo. App. 1998).

A court could conclude that formulation of treatment plan for parent incarcerated for more than six years is possible. The court could conclude that, even though a parent may be confined for six years or more, the age of the child, the existence of capable members of an extended family, or other factors may allow the

formulation of an appropriate treatment plan and that considerations of the child's welfare would not support a termination order. People in Interest of E.I.C., 958 P.2d 511 (Colo. App. 1998).

Subsection (1)(b) must be read in pari materia with § 19-3-508 (1)(e) since they are part of the same code and pertain to the same subject. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Treatment plan was an "appropriate treatment plan" within meaning of statute requiring court to find that an appropriate treatment plan approved by court has not been complied with by parent or has not been successful to terminate parent-child legal relationship. People in Interest of L.L., 715 P.2d 334 (Colo. 1986).

The provisions of subsection (1)(b)(I) were added to the criteria for termination of the parent-child legal relation to cover those situations in which an appropriate treatment plan could not be devised and, thus, would not succeed in reuniting the family. People in Interest of C.S.M., 805 P.2d 1129 (Colo. App. 1990).

Substantial compliance with treatment plan not determinative. If compliance with the treatment plan was not successful in correcting the conduct or condition which initially led to state intervention, termination of the parent-child legal relationship is proper. People in Interest of D.M.W., 752 P.2d 587 (Colo. App. 1987).

Fact that a treatment plan is not ultimately successful does not mean that it was therefore inappropriate since, in many cases, it is virtually impossible to devise a plan which will guarantee success. People in Interest of L.G., 737 P.2d 431 (Colo. App. 1987).

When mother had not responded to outpatient treatment and evidence showed that no in-patient program for the mother's particular problem was available, the trial court was correct in concluding that an appropriate treatment plan could not be devised. The argument that in-patient treatment must be offered in order to determine whether it will be successful is rejected. People in Interest of C.S.M., 805 P.2d 1129 (Colo. App. 1990).

Trial court's finding that mother's conduct or condition was unlikely to change within a reasonable time to meet the child's needs was supported by the record. People in Interest of V.W., 958 P.2d 1132 (Colo. App. 1998).

Information from previous hearings may be considered. There is no prohibition by statute or common law that would prohibit a trial court from considering information gleaned from previous hearings on unsuccessful petitions to terminate parent-child relationships when making determinations of fact in resolving a pending petition to terminate the relationship. However, additional facts are required to justify a trial court's change in its conclusions from a previous hearing at which it refused to terminate such relationship. People in Interest of J.R., 711 P.2d 701 (Colo. App. 1985).

Termination of the parental relationship for children of native American status is governed by the Indian Child Welfare Act of 1978 and the standard under that act is proof beyond a reasonable doubt. People in Interest of C.A.J., 709 P.2d 604 (Colo. App. 1985).

When the ICWA applies, termination of parental rights may not be ordered unless it is shown beyond a reasonable doubt that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. People ex rel. A.N.W., 976 P.2d 365 (Colo. App. 1999).

The Americans with Disabilities Act is not a defense at parental rights termination proceedings. The focus of the hearing is on the welfare of the child. Regardless of the parent's special needs or restricted capabilities, the child is entitled to a minimum level of parental care. People ex rel. T.B., 12 P.3d 1221 (Colo. App. 2000).

Clear and convincing evidence is the appropriate constitutional standard of proof in proceedings involving termination of a parent-child relationship. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of S.T., 678 P.2d 1054 (Colo. App. 1983); People in Interest of M.P., 690 P.2d 1300 (Colo. App. 1984); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

The clear and convincing standard strikes an appropriate balance between the risk of an erroneous termination of the parental relationship, on the one hand, and the parens patriae interest of the state in promoting the child's welfare, on the other. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

"Clear and convincing" standard applied prospectively. The "clear and convincing evidence" standard in proceedings involving the termination of a parent-child relationship will be given only prospective effect, and will apply only to termination hearings which commenced after March 24, 1982. People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of C.L.I., 710 P.2d 1183 (Colo. App. 1985).

Statute need not enunciate all factors which may lead to termination. Fundamental fairness does not require a statute to enunciate in all-encompassing examples, or exactly described acts, precisely how poorly a parent can treat a child before risking loss of parental rights. People v. Jennings, 641 P.2d 276 (Colo. 1982).

Subsection (1), when read as a whole and applying ordinary meaning to the language, permits termination so long as at least one of the statutory grounds has been established by

clear and convincing evidence but does not limit the court to only one statutory ground for the termination order. People ex rel. D.C.-M.S., 111 P.3d 559 (Colo. App. 2005).

Mother not denied due process because she did not know on which criteria the court would terminate the parent-child relationship because motion alleged both statutory grounds as a basis for termination, giving her notice that court could move forward on either or both grounds. People ex rel. D.C.-M.S., 111 P.3d 559 (Colo. App. 2005).

The court may still consider mother's incarceration under subsection (2) even though she was eligible for parole in fewer than 36 months following the child's adjudication. That subsection requires the court to consider incarceration if a parent must wait longer than 36 months before becoming eligible for parole, but it does not preclude the court from considering the effect of a lesser period of incarceration. People in Interest of M.H., 10 P.3d 713 (Colo. App. 2000).

A court may consider parental incarceration as a factor in determining parental fitness and, thereby, as a factor affecting the needs of a child who has been adjudicated dependent or neglected. If a parent cannot be expected to provide a stable home atmosphere for the child within a reasonable period, the state's compelling interest in the welfare of the subject child justifies the termination of that parent's rights. K.D. v. People, 139 P.3d 695 (Colo. 2006).

It was within the court's statutory discretion to consider the time the child spent in foster care while the mother was incarcerated. People in Interest of M.H., 10 P.3d 713 (Colo. App. 2000).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is subject to the longer incarceration period. The termination of parental rights concerning the older child must still be subject to the longer allowable incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

Where a parent chooses to remain in a relationship with a person who poses a threat to the welfare of the child, the conduct of that parent may prevent him or her from providing protection adequate to meet the child's needs. Accordingly, that parent may be found unfit under subsection (2). That the person who poses a threat happens to be the other parent does not alter this analysis. People ex rel. C.T.S., 140 P.3d 332 (Colo. App. 2006).

Parental admission of dependency and neglect. Where a parent, with the advice of counsel and with notice of the allegations of dependency and neglect, admits the petition, this meets the requirements of subsection (1)(b). People ex rel. J.F., 672 P.2d 544 (Colo. App. 1983).

The credibility of witnesses, the sufficiency, probative effect, and weight of the evidence, and the inferences drawn therefrom are within the province of the trial court; therefore, the trial court's findings and conclusions will not be disturbed unless they have no support in the record. People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

Subsection (3) applicable to determination of unfitness, not to termination. Subsection (3) does not apply directly to court's decision as to termination, but to the court's determination whether the parents are unfit. People in Interest of K.C., 685 P.2d 1377 (Colo. App. 1984).

An unfit parent is one whose conduct or condition renders him or her unable to give the child reasonable parental care. Reasonable parental care requires, at a minimum, that the parent provide nurturing and protection adequate to meet the child's physical, emotional, and mental health needs. People ex rel. A.N.W., 976 P.2d 365 (Colo. App. 1999).

Primary consideration given to needs of children. Trial court acted within proper discretion in giving primary consideration to physical, mental, and emotional conditions and needs of children, without attempting to treat mother for insight disorder identified by psychologist called at trial. People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985).

Although the term "emotional illness" in this section can be subject to different interpretations, this section is not unconstitutional because of vagueness. People in Interest of S.J.C., 776 P.2d 1103 (Colo. 1989).

The term "emotional illness" does not require a showing that parent has been diagnosed with schizophrenia, psychosis, or manic depression. The general assembly's use of both "emotional illness" and "mental illness" suggests that these terms are to be given different meanings. For a court to find that a parent has an emotional illness, it is sufficient that there be evidence that the parent has long-standing emotional conditions that render the parent unable to provide for the needs of a child. People ex rel. K.D., 155 P.3d 634 (Colo. App. 2007).

Conviction for purposes of subsection (1)(b)(III) means a judgment of conviction in a trial court and not a final determination of conviction after appeal. To hold otherwise would violate the important policies of the Colorado Children's Code which seeks to protect the best interests of the child. People in Interest of T.T., 845 P.2d 539 (Colo. App. 1992).

Evidence sufficient to sustain termination of parent-child relationship. People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (1980); People in Interest of S.T., 678 P.2d 1054 (Colo. App. 1983); People in Interest of M.P.,

690 P.2d 1300 (Colo. App. 1984); People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985); People in Interest of A.H., 736 P.2d 427 (Colo. App. 1987); People in Interest of C.B., 740 P.2d 11 (Colo. 1987); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988); People in Interest of T.T., 845 P.2d 539 (Colo. App. 1992); People ex rel. A.D., 56 P.3d 1246 (Colo. App. 2002).

Evidence not sufficient to sustain termination of parent-child relationship. People in Interest of C.L.I., 710 P.2d 1183 (Colo. App. 1985).

Evidence sufficient to find parents unfit. Trial court properly found parents to be unfit based on evidence of emotional illness, mental illness, mental deficiency, neglect of children, and evidence that reasonable efforts by county department of social services and mental health center had failed to rehabilitate parents. People ex rel. L.D., 671 P.2d 940 (Colo. 1983).

Parent's refusal to document sobriety through random urinalysis testing and to participate in substance abuse treatment shows that parent was not committed to meeting the child's needs and was unfit to parent. People ex rel. K.T., 129 P.3d 1080 (Colo. App. 2005); People ex rel. D.P., 181 P.3d 403 (Colo. App. 2008).

Parent's refusal to acknowledge impact of prenatal substance abuse on child prevented parent from providing reasonable parental care. People ex rel. K.T., 129 P.3d 1080 (Colo. App. 2005).

Record supports the trial court's finding that the department of social services made reasonable efforts to rehabilitate mother. Even though services specifically designed for individuals with disabilities were not provided to mother for almost one year, intensive in-home family preservation services adapted to meet her special needs were provided immediately. People ex rel. J.M., 74 P.3d 475 (Colo. App. 2003).

Father not given reasonable amount of time to comply with treatment plan where treatment plan was entered on March 6, the department filed motion to terminate father's parental rights on March 29, and termination hearing was scheduled for June 11. Once the court determines that a treatment plan can be devised for a parent and approves a treatment plan, the parent must be given a reasonable amount of time to comply with its provisions. People ex rel. D.Y., 176 P.3d 874 (Colo. App. 2007).

Juvenile court's order to retain legal custody of children in department, appoint foster parents as permanent legal guardians, direct that children have no further contact with mother, and retain continuing jurisdiction is not the functional equivalent of a termination of mother's parental rights. Judge's order is supported by the record, but leaves open the possibility that mother could seek a modification of order to regain custody or obtain parenting time or other relief. People in Interest of R.W. and T.W., 989 P.2d 240 (Colo. App. 1999), aff'd sub nom. L.L. v. People, 10 P.3d 1271 (Colo. 2000).

While placement of a child in the guardianship of family members with limited or no parental contact may be a viable alternative to termination in some cases, in other instances there may be estrangement between the parents and the guardians such that nothing short of termination will be in the child's best interests. People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002).

Findings that support an order terminating the parent-child relationship are adequate as long as they conform to the statutory criteria set forth in this section. People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002).

Order for termination not supported where court did not make findings that conform to the statutory criteria. While the order recited evidence adduced at trial and provided citations to relevant statutory and case law, the order drew no conclusions linking the recited facts to the relevant law. People ex rel. A.G., 264 P.3d 615 (Colo. App. 2010), rev'd on other grounds, 262 P.3d 646 (Colo. 2011).

A treatment plan need not be devised if a parent has subjected a sibling of the child who is the subject of the dependency and neglect proceeding to a gravely disabling injury. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Failure to reduce termination order to writing and to sign and to date the order at the time of the termination hearing does not render the termination improper. People ex rel. A.W., 74 P.3d 497 (Colo. App. 2003).

Finding of a conflict of interest between department and parents does not necessarily require a reversal of decision. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Appellate court must apply clearly erroneous standard of review to trial court's findings of fact. In reversing trial court's order terminating the parent-child legal relationship, the appellate court improperly substituted its judgment for that of the trial court concerning witness credibility, and the sufficiency, weight, and probative value of the evidence. People ex rel. A.J.L., 243 P.3d 244 (Colo. 2010).

Trial court not required to give more weight to more recent evidence. The weighing of evidence is within the trial court's discretion after considering witness credibility and the sufficiency and probative value of the evidence. Trial court could have reasonably found that the recent, more positive evaluation of mother de-

served less weight because the court could neither review the report nor adequately evaluate its veracity. People ex rel. A.J.L., 243 P.3d 244 (Colo. 2010).

Proceedings commenced before July 1, 1977. For judicial criteria for termination applicable to dependency proceedings commenced before July 1, 1977, see People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Foster parents may participate fully in a dispositional hearing, but have only a limited right to provide information at a termination hearing. A foster parent's relationship with a child does not give rise to a constitutionally protected liberty interest at a termination hearing. Without such constitutionally protected liberty interest, a foster parent does not have a constitutional or statutory right that entitles him or her to full participation in a termination hearing. People ex rel. A.M., __ P.3d __ (Colo. App. 2010).

Applied in People in Interest of H.A.C. v. D.C.C., 198 Colo. 260, 599 P.2d 881 (1979); People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982); People in Interest of P.N., 663 P.2d 253 (Colo. 1983); People in Interest of M.H., 683 P.2d 807 (Colo. App. 1984); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006); People ex rel. S.M.A.M.A., 172 P.3d 958 (Colo. App. 2007); People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

19-3-605. Request for placement with family members. (1) Following an order of termination of the parent-child legal relationship, the court shall consider, but shall not be bound by, a request that guardianship and legal custody of the child be placed with a relative of the child. When ordering guardianship of the person and legal custody of the child, the court may give preference to a grandparent, aunt, uncle, brother, sister, half-sibling, or first cousin of the child when such relative has made a timely request therefor pursuant to the requirement of this subsection (1) and the court determines that such placement is in the best interests of the child. Such request must be submitted to the court no later than twenty days after the motion for termination is filed pursuant to section 19-3-602. Nothing in this section shall be construed to require the child placement agency with physical custody of the child to notify said relatives described in this section of the pending termination of parental rights.

(2) Notwithstanding the provisions of subsection (1) of this section to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) In making placement determinations concerning a child following the order of termination of the parent-child legal relationship pursuant to the provisions of this section, the court may consider all pertinent information related to modifying the placement of the child prior to removing the child from his or her placement, giving strong consideration to the following:

(a) An individualized assessment of the child's needs created pursuant to Title IV-E of the federal "Social Security Act", as amended, and regulations promulgated thereunder, as amended;

(b) Whether the child's placement at the time of the hearing is a safe and potentially permanent placement for the child;

(c) The child's actual age and developmental stage and, in consideration of this information, the child's attachment needs;

(d) Whether the child has significant psychological ties to a person who could provide a permanent placement for the child, including a relative, and, if so, whether this person maintained contact with the child during the child's placement out of the home;

(e) Whether a person who could provide a permanent placement for the child is willing to maintain appropriate contact after an adoption of the child with the child's relatives, particularly sibling relatives, when such contact is safe, reasonable, and appropriate;

(f) Whether a person who could provide a permanent placement for the child is aware of the child's culture and willing to provide the child with positive ties to his or her culture;

(g) The child's medical, physical, emotional, or other specific needs, and whether a person who could provide a permanent placement for the child is able to meet the child's needs; and

(h) The child's attachment to the child's caregiver at the time of the hearing and the possible effects on the child's emotional well-being if the child is removed from the caregiver's home.

Source: L. 87: Entire title R&RE, p. 789, § 1, effective October 1. **L. 2003:** Entire section amended, p. 2626, § 7, effective June 5. **L. 2005:** (1) amended, p. 93, § 1, effective March 31; entire section amended, p. 678, § 3, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-105.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section by House Bill 05-1174 and House Bill 05-1173 were harmonized.

Cross references: (1) For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 194, Session Laws of Colorado 2005.

(2) For part E of Title IV of the federal "Social Security Act", see 42 U.S.C. sec. 70 et seq.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (August 2004).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

The provisions of this section are distinct from the proceedings for voluntary relinquishment under § 19-5-104. Under this section, a grandparent is an interested party. Under § 19-5-104, if the birth parents state that the grandparent should not have custody and the grandparent has never had physical or legal custody of the child, the grandparent does not have standing in the relinquishment proceedings. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Aunt did not have constitutionally protected interest and failure to notify her of termination proceedings did not violate substantive or procedural due process. People in Interest of C.E., 923 P.2d 383 (Colo. App. 1996).

While department and trial court must consider remedies less drastic than termination, this means that the department must evaluate a reasonable number of persons suggested to it as possible placements by the family and other interested persons, but nothing requires the department to make special inquiry and independently identify and evaluate other possible placements within or outside the family. Father's testimony at termination hearing that other relatives might be interested in caring for the child, with no indication that father identified any of these relatives to the department or the court, was insufficient to require the department to explore these family members as options. People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

Placing child in foster care rather than with grandparents out of state is permissible when purpose of the placement is to strengthen family ties and secure potential relative placement within the state. People ex rel. E.C., 47 P.3d 707 (Colo. App. 2002).

While placement with a grandparent who is available and appropriate is given statutory preference if such placement is in the child's best interests, placement with a grandparent is not a viable alternative to termination if the grandparent lacks appreciation of the parent's problems or of the child's needs. People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

Trial court did not err in rejecting placement with the paternal grandmother as a less drastic alternative to termination when findings indicate that grandmother did not interact well with the child; that the child had an ambivalent attachment to the grandmother; that the grandmother was not interested in participating in treatment to address her relationship with the child; and that the grandmother was unlikely to comply with no contact orders. People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is

subject to the longer incarceration period. The termination of parental rights concerning the older child must still be subject to the longer allowable incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

19-3-606. Review of child's disposition following termination of the parent-child legal relationship. (1) The court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing the agency or individual vested with custody of the child shall report to the court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the court, based upon an independent investigation, for the best disposition of the child. Any report required under this subsection (1) shall be subject to the provisions of section 19-1-309.

(2) If no adoption has taken place within a reasonable time and the court determines that adoption is not immediately feasible or appropriate, the court may order that provision be made immediately for alternative long-term placement of the child.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1. **L. 89:** (1) amended, p. 944, § 5, effective March 27. **L. 90:** (1) amended, p. 1012, § 7, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (October 2002).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Guardian ad litem may have access to confidential adoption information. Guardian ad litem appointed in prior dependency and neglect proceeding may have access to the name and address of adoptive home for preparation of report required by section. People in Interest of M.C.P., 768 P.2d 1253 (Colo. App. 1988).

Applied in People in Interest of P.N., 663 P.2d 253 (Colo. 1983).

19-3-607. Expert testimony. (1) An indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the court's review and approval, shall be paid by the state of Colorado pursuant to section 19-3-610.

(2) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For casenote, "People in the Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

By taking advantage of opportunity to have an expert appointed by the court pursuant to this section, an individual submits to the disclosure of the evaluation to all parties and waives any psychologist-patient privilege which may have attached. People in Interest of T.S.B., 757 P.2d 1112 (Colo. App. 1988), aff'd, 785 P.2d

132 (Colo. 1990).

Attorney-client privilege did not attach to expert evaluation conducted by expert appointed under this section. D.A.S. v. People, 863 P.2d 291 (Colo. 1993).

Provisions of subsection (2) may be waived by a party in interest. People ex rel. J.F., 672 P.2d 544 (Colo. App. 1983).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of T.R.S., 717 P.2d 1025 (Colo. App. 1986); People in Interest of L.G., 737 P.2d 431 (Colo. App. 1987).

19-3-608. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, but it shall not modify the child's status as an heir at law which shall cease only upon a final decree of adoption.

(2) No order or decree entered pursuant to this part 6 shall disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian tribe, any agency, any state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Termination includes the elimination of any right of continued visitation between parent and child, including such rights provided in a court order. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

19-3-609. Appeals. (1) Appeals of court decrees made under this part 6 shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

(2) Whenever an appeal is made under this part 6, an indigent parent, upon request, shall be provided a transcript of the trial proceeding for the appeal at the expense of the state pursuant to section 19-3-610.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For casenote, "People in the Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Determination of indigency lies within the discretion of the trial court. Where a party has failed to provide documentation of indigency as ordered by the trial court, the court may deny such party a free transcript and such denial is not error. People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997).

A party who proceeded as an indigent in the trial court may proceed as an indigent on appeal without further authorization unless the court finds, in writing, that the party is no longer entitled to so proceed. The trial court may order the production of any documents or evidence it deems necessary to determine continuing indigency. People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997).

An appointed lawyer for an indigent parent during dependency and neglect proceedings cannot withdraw solely because the lawyer determines the appeal to be without merit. Rather the lawyer must nonetheless file petitions on appeal in accordance with appellate rules. A.L.L. v. People, 226 P.3d 1054 (Colo. 2010).

Minute orders showing that magistrate accepted father's admission, sustained the petition in dependency and neglect, and approved treatment plan for father became appealable upon entry of judgment of termination. People ex rel. T.E.M., 124 P.3d 905 (Colo. App. 2005).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-3-610. Budgetary allocation for expenses. The general assembly shall make annual appropriations to the office of the state court administrator for the purpose of meeting the expenses of sections 19-3-607 (1) and 19-3-609 (2).

Source: L. 87: Entire title R&RE, p. 791, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-611. Review of decisions regarding placement of children. (Repealed)

Source: L. 88: Entire section added, p. 755, § 2, effective May 31. **L. 91:** Entire section repealed, p. 883, § 1, effective June 5.

PART 7

REVIEW OF PLACEMENT

Law reviews. For article, "Achieving Safe, Permanent Homes for Colorado Children", see 31 Colo. Law. 37 (October 2002).

19-3-701. Petition for review of need for placement. (Repealed)

Source: L. 87: Entire title R&RE, p. 791, § 1, effective October 1. **L. 91:** (1) amended, p. 1159, § 4, effective July 1. **L. 92:** (2) amended, p. 225, § 12, effective July 1. **L. 93:** (1) amended, p. 1637, § 24, effective July 1; (1) amended, p. 1139, § 75, effective July 1, 1994. **L. 94:** (2)(c) and (6) amended, p. 2686, § 206, effective July 1. **L. 96:** (6) amended, p. 1247, § 117, effective August 7. **L. 97:** (6) amended, p. 1441, § 19, effective July 1. **L. 99:** (2)(c) and (6) amended, p. 912, § 8, effective July 1. **L. 2007:** Entire section repealed, p. 1509, § 5, effective May 31.

Cross references: For the legislative declaration contained in the 2007 act repealing this section, see section 1 of chapter 351, Session Laws of Colorado 2007.

19-3-702. Permanency hearing - periodic review. (1) In order to provide stable permanent homes for children in as short a time as possible, a court on its own motion or upon motion brought by any party shall conduct a permanency hearing if a child cannot be returned home under section 19-1-115 (4) (b) for the purpose of making a determination regarding the future status of the child. Such permanency hearing shall be held as soon as possible following the dispositional hearing but shall be held no later than twelve months after the date the child is considered to have entered foster care and no later than every twelve months thereafter while the child remains in out-of-home placement, or more frequently as deemed necessary by the court. If the court finds that reasonable efforts to

reunify the child and the parent are not required pursuant to section 19-1-115 (7), a permanency hearing that includes consideration of in-state and out-of-state permanent placement options for the child shall be held within thirty days after the finding. If the court finds that reasonable efforts to reunify the child and the parent are not required and a motion for termination has been properly filed pursuant to section 19-3-602, the permanency hearing and the hearing on the motion for termination may be combined, and all of the court determinations required at both hearings shall be made in the combined hearing. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), such permanency hearing shall be held no later than three months after the decree of disposition of the child. A child shall be considered to have entered foster care on the date that the child is placed out of the home. If the court finds that an appropriate treatment plan cannot be devised at a dispositional hearing in accordance with section 19-3-508 (1) (e) (I), the permanency hearing shall be held no later than thirty days after such determination, unless a motion for termination of parental rights has been filed within thirty days after the court's finding. Where possible, the permanency hearing shall be combined with the six-month review as provided for in section 19-1-115 (4) (c).

(1.5) Any hearing or action, such as a paper review, an ex parte hearing, or a stipulated agreement that has been made an order of the court, that is not open to the participation of the parents of a child, the child, if appropriate, and the foster parents, relative caregivers, or pre-adoptive parents of a child, if any, shall not be considered a permanency hearing for purposes of this section.

(2) When the court schedules a permanency hearing under this section, the court shall promptly issue a notice reciting briefly the substance of the motion. The notice shall set forth the constitutional and legal rights of the child and the child's parents or guardian. Notice of the hearing shall be given in accordance with the requirements stated in section 19-3-502 (7). Nothing in this section shall require the presence of any person before the court unless the court so directs. The court shall order the county department of social services to develop a permanency plan for the child, which plan shall be completed and submitted to the court at least three working days in advance of the permanency hearing as required in this section.

(2.5) At a permanency hearing held in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2) and has been placed out of the home for three months, the court shall review the progress of the case and the treatment plan including the provision of services. The court may order the county department of social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article. Cause may include, but not be limited to, the following conditions:

(a) The parents or guardians have maintained regular parenting time and contact with the child, and the child would benefit from continuing this relationship; or

(b) The criteria of section 19-3-604 have not yet been met.

(2.7) Consideration of the placement of children together as a sibling group shall not delay the efforts for expedited permanency planning or permanency planning in order to achieve permanency for each child in the sibling group.

(3) Except as provided in subsection (2.5) of this section, at the permanency hearing, the court shall first determine whether the child shall be returned to the child's parent or guardian, pursuant to section 19-1-115 (4) (b) and, if applicable, the date on which the child shall be returned, and whether reasonable efforts have been made to find a safe and permanent placement for the child. If the child is not returned to the custody of the child's parent or guardian, the court shall determine whether there is a substantial probability that the child will be returned to the physical custody of the child's parent, guardian, or legal custodian within six months. If the court so determines, it shall set another review hearing for not more than six months, which shall be a permanency hearing.

(3.5) At any permanency hearing conducted by the court, the court shall make determinations as to the following:

(a) Whether procedural safeguards to preserve parental rights have been applied in connection with any change in the child's placement or any determination affecting parental visitation of the child;

(b) Whether reasonable efforts have been made to finalize the permanency plan that is in effect at the time of the permanency hearing;

(c) If a child resides in a placement out of state, whether the out-of-state placement continues to be appropriate and in the best interests of the child; and

(d) If the child is sixteen years of age or older, whether the permanency plan includes independent living services.

(3.7) The court conducting the permanency hearing shall consult with the child in an age-appropriate manner regarding the child's permanency plan.

(4) If the court determines that the child cannot be returned to the physical custody of such child's parent or guardian and that there is not a substantial probability that the child will be returned to the physical custody of such child's parent or guardian within six months, the court shall enter an order determining the future status or placement of the child. Any court order regarding future status or placement of a child out of the home shall include specific findings concerning the placement goal for the child. Such findings shall include a determination of whether the placement goal for the child is that the child be returned to the parent, be referred for legal guardianship or custody, be placed in a planned permanent living arrangement, or be placed for adoption, in which case the county department shall file a motion for termination of parental rights. In cases in which the county department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, the court's findings shall include a determination of whether the placement goal for the child is that the child be referred for termination of parental rights, be placed for adoption, be placed with a fit and willing relative, be placed with a legal guardian or custodian, or be placed in another permanent living arrangement. The court must be provided with documentation of a compelling reason for establishing a permanency plan with a goal other than reunification, adoption, or legal guardianship.

(5) In order to enable the child to obtain a permanent home, the court may make the following determinations and orders:

(a) If the court finds from the materials submitted by the county department of social services that the child appears to be adoptable and meets the criteria for adoption in section 19-5-203, the court may order the county department of social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article. Cause may include, but need not be limited to, any of the following conditions:

(I) The parents or guardians have maintained regular parenting time and contact with the child, and the child would benefit from continuing this relationship; or

(II) A child who is twelve years of age or older objects to the termination of the parent-child legal relationship; or

(III) The child's foster parents are unable to adopt the child because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the child but are willing and capable of providing the child with a stable and permanent environment, and the removal of the child from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the child; or

(IV) The criteria of section 19-3-604 have not yet been met.

(b) If the child is currently in a foster home and the foster parents are capable of providing and willing to provide a stable and permanent environment, the court may determine that the child shall not be removed from the home if the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the foster parents.

(6) (a) Periodic reviews conducted by the court or, if there is no objection by any party to the action, in the court's discretion, through an administrative review conducted by the state department of human services, shall determine the following:

(I) Whether the child's safety is protected in the placement;

(II) Whether reasonable efforts have been made to find a safe and permanent placement;

(III) The continuing necessity for and appropriateness of the placement;

(IV) The extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; and

(V) A likely date by which the child may be returned to and safely maintained at the home, placed for adoption, legal guardianship, or placed in another permanent safe placement setting.

(b) (Deleted by amendment, L. 2003, p. 2487, § 2, effective July 1, 2003.)

(c) (Deleted by amendment, L. 2001, p. 847, § 11, effective June 1, 2001.)

(6.5) If the court combines a permanency hearing and a periodic review, the court shall make the determinations required by this section for both the permanency hearing and the periodic review at the combined hearing.

(7) (Deleted by amendment, L. 93, p. 390, § 4, effective April 19, 1993.)

(8) (a) Subsequent reviews by the court or, if there is no objection by any party to the action, in the court's discretion, through an administrative review conducted by the state department of human services, shall be conducted every six months except when the court requires a court review or when a court review is requested by the child's parents or guardians or by the child. In the event that an administrative review is ordered, all counsel of record shall be notified and may appear at said review. The entity conducting the review shall make the same determinations as are required at a periodic review conducted pursuant to paragraph (a) of subsection (6) of this section.

(b) (Deleted by amendment, L. 2003, p. 2487, § 2, effective July 1, 2003.)

(c) (Deleted by amendment, L. 2001, p. 847, § 11, effective June 1, 2001.)

(9) In making placement determinations concerning a child pursuant to the provisions of this section, the court may consider all pertinent information related to modifying the placement of the child prior to removing the child from his or her placement, giving strong consideration to the following:

(a) An individualized assessment of the child's needs created pursuant to Title IV-E of the federal "Social Security Act", as amended, and regulations promulgated thereunder, as amended;

(b) Whether the child's placement at the time of the hearing is a safe and potentially permanent placement for the child;

(c) The child's actual age and developmental stage and, in consideration of this information, the child's attachment needs;

(d) Whether the child has significant psychological ties to a person who could provide a permanent placement for the child, including a relative, and, if so, whether this person maintained contact with the child during the child's placement out of the home;

(e) Whether a person who could provide a permanent placement for the child is willing to maintain appropriate contact after an adoption of the child with the child's relatives, particularly sibling relatives, when such contact is safe, reasonable, and appropriate;

(f) Whether a person who could provide a permanent placement for the child is aware of the child's culture and willing to provide the child with positive ties to his or her culture;

(g) The child's medical, physical, emotional, or other specific needs, and whether a person who could provide a permanent placement for the child is able to meet the child's needs; and

(h) The child's attachment to the child's caregiver at the time of the hearing and the possible effects on the child's emotional well-being if the child is removed from the caregiver's home.

(10) Prior to closing a case prior to a youth's eighteenth birthday, the court or the youth's guardian ad litum shall notify the youth that he or she shall lose the right to receive medicaid until the youth's twenty-first birthday if the case is closed prior to the youth's eighteenth birthday.

Source: L. 89: Entire section added, p. 930, § 2, effective April 23. **L. 92:** (1), (2), (4), (6), and (8) amended, p. 225, § 13, effective July 1. **L. 93:** (1), (2), (4), (6), and (7) amended, p. 390, § 4, effective April 19; (5)(a)(I) amended, p. 582, § 20, effective July 1. **L. 94:** (1) and (3) amended and (2.5) added, p. 2057, § 9, effective July 1; (6) and (8) amended, p. 2687, § 207, effective July 1. **L. 98:** (1), (3), (4), and (6) amended, p. 1421,

§ 9, effective July 1. **L. 99:** (1), (2), (2.5), (3), (6), and (8) amended, p. 913, § 9, effective July 1. **L. 2000:** (2.7) added, p. 476, § 5, effective July 1. **L. 2001:** Entire section amended, p. 847, § 11, effective June 1. **L. 2003:** (1), (6)(a), (6)(b), and (8)(b) amended and (6.5) added, p. 2487, § 2, effective July 1. **L. 2005:** (9) added, p. 679, § 4, effective July 1. **L. 2007:** (1) and (1.5) amended and (3.7) added, p. 1018, § 9, effective May 22. **L. 2008:** (10) added, p. 1533, § 2, effective July 1.

Editor's note: Although subsections (3) and (4) refer to the term "custody", references to the term "custody", and related terms, have been changed in other places in the Colorado Revised Statutes to correspond with the use of the term "parental responsibilities" as described in section 14-10-124, C.R.S.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (5)(a)(I), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1999 act amending subsections (1), (2), (2.5), (3), (6), and (8), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2005 act enacting subsection (9), see section 1 of chapter 194, Session Laws of Colorado 2005.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989). For article, "Permanency Planning in Dependency Cases", see 20 Colo. Law. 717 (1991).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The general assembly intended that this section apply to all children placed out of the home, not only to those placed into foster care. People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005).

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

Section 19-1-109 (2)(c) is not meant to delay permanent placement decisions while appeals of dependency and neglect orders are litigated. Section 19-1-109 (2)(c) provides the trial court with continuing jurisdiction to enter further permanent custody orders under this section if it furthers the child's best interests, even if those orders are entered after the order adjudicating the child dependent or neglected is appealed. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Once a petition for custody under § 14-10-123 is certified to be determined in a hearing under this section, dissolution-of-marriage statutes cease to apply. Instead, provisions of the Colorado Children's Code govern, in view of the differing policies behind the respective statutes. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993).

Permanency order under this section held not final and appealable. People in Interest of H.R., 883 P.2d 619 (Colo. App. 1994).

Failure to hold permanency planning hearing within 18 months after out-of-home placement is not jurisdictional. People in Interest of R.W. and T.W., 989 P.2d 240 (Colo. App. 1999), aff'd sub nom. L.L. v. People, 10 P.3d 1271 (Colo. 2000).

In determining whether to return the child to the home, the court must consider whether the parent can provide reasonable parental care. Reasonable parental care means, at a minimum, providing nurturing and protection adequate to meet the child's physical, emotional, and mental health needs. People ex rel. A.W.R., 17 P.3d 192 (Colo. App. 2000).

A finding of unfitness not required in order to decline to award a parent permanent legal custody. Under this section, an award of permanent custody to a nonparent may be made even if a parent is not found to be unfit. People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005).

Mother's due process rights were not violated when the court changed the permanency plan and transferred the case to the district court for a termination hearing without first conducting a permanency hearing, but the mother was given a full and fair opportunity to address any issues regarding the change in the permanency plan at the termination hearing. People ex rel. M.B., 70 P.3d 618 (Colo. App. 2003).

19-3-703. Permanent home. In a county designated pursuant to section 19-1-123, if a child is under six years of age at the time a petition is filed in accordance with section

19-3-501 (2), the child shall be placed in a permanent home no later than twelve months after the original placement out of the home unless the court determines that a placement in a permanent home is not in the best interests of the child at that time. In determining whether such a placement delay is in the best interests of the child, the court must be shown clear and convincing evidence that reasonable efforts, as defined in section 19-1-103 (89), were made to find the child an appropriate permanent home and such a home is not currently available or that the child's mental or physical needs or conditions deem it improbable that such child would have a successful permanent placement. The caseworker and the child's guardian ad litem shall provide the court with a report specifying which services are being given the child in order to remedy the child's problems. The case shall be reviewed at least every six months until the child is permanently placed. The six-month reviews and twelve-month permanency hearings shall continue as long as the child remains in foster care. Clear and convincing standards of evidence shall be applicable at any such review. For the purposes of this section, a permanent home shall include, but not be limited to, the child's reunification with the child's parents; placement with a relative, with a potential adoptive parent, or permanent custody granted to another; or, if the child cannot be returned home, placement in the least restrictive level of care.

Source: L. 94: Entire section added, p. 2058, § 10, effective July 1. **L. 98:** Entire section amended, p. 822, § 28, effective August 5. **L. 2001:** Entire section amended, p. 851, § 12, effective June 1.

Cross references: For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (October 2002).

Child in foster home with potential adoptive parents was in a "permanent home" for purposes of § 19-3-703 and removal from presumptively permanent home delayed placement. Therefore, department was required to show by clear and convincing evidence that (1) it was making reasonable efforts to find child an appropriate home, and (2) concerns about foster mother rendered that foster home "not currently available" pursuant to the statute. People ex rel A.C., __ P.3d __ (Colo. App. 2011).

ARTICLE 3.3

Child Protection Ombudsman Program

19-3.3-101. Legislative declaration.
19-3.3-102. Child protection ombudsman program - independence of office - administrative rules.
19-3.3-103. Child protection ombudsman program - powers and duties - access to information - confidentiality - testimony.
19-3.3-104. Qualified immunity.
19-3.3-105. Selection of advisory work group - development of detailed plan.
19-3.3-106. Award of contract.
19-3.3-107. Child protection ombudsman program fund - created.
19-3.3-108. Child protection ombudsman program - annual report.
19-3.3-109. Review by the state auditor's office.

19-3.3-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) Child abuse and neglect is a serious and reprehensible problem in society;

(b) The protection of children from abuse and neglect by applying prevention measures and observing best practices in treating children who are abused and neglected must be one of Colorado's highest public policy priorities;

(c) The child protection system must protect and serve Colorado's children in a manner that keeps them safe and healthy and promotes their well-being;

(d) The children and families served by the child protection system, as well as the public, must have a high level of confidence that the system will act in a child's best interests and will respond to the child's needs in a timely and professional manner;

(e) To engender this high level of confidence in the child protection system, it is important that children and families who become involved in the system, mandatory reporters, and the general public have a well-publicized, easily accessible, and transparent grievance process for voicing concerns regarding the child protection system along with the expectation that those concerns, once voiced, will be heard and addressed in a timely and appropriate manner; and

(f) To improve child protection outcomes and to foster best practices, there must be effective accountability mechanisms, including the review and evaluation of concerns voiced by children and families, mandatory reporters, persons involved in the child protection system, and members of the general public, that provide policymakers with the information necessary to formulate systemic changes, where appropriate.

(2) The general assembly further finds and declares that the establishment of the child protection ombudsman program will:

(a) Improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system; and

(b) Allow families, concerned citizens, mandatory reporters, employees of the state department and county departments, and other professionals who work with children and families to voice their concerns, without fear of reprisal, about the response by the child protection system to children experiencing, or at risk of experiencing, child maltreatment.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 974, § 1, effective May 14.

19-3.3-102. Child protection ombudsman program - independence of office - administrative rules. (1) The child protection ombudsman program, referred to in this article as the "program", is hereby established in the state department. The executive director shall establish and administer the program under the state department by contract with a public agency or other appropriate private nonprofit organization.

(2) (a) The head of the child protection ombudsman program shall be known as the child protection ombudsman, referred to in this article as the "ombudsman". The program shall be operated by a full-time, qualified ombudsman with the professional designations and qualifications determined appropriate by the executive director after consultation with the work group created pursuant to section 19-3.3-105.

(b) Pursuant to the provisions of section 19-3.3-103, the ombudsman shall facilitate a process for independent, impartial review of family and community concerns; request independent, accurate information; and, if appropriate, conduct case reviews to help resolve child protection issues.

(c) The ombudsman shall also be a key advisor concerning issues relating to child safety and protection in Colorado by virtue of his or her responsibility and authority to make advisory recommendations to the state department, county departments, county commissioners, the governor, and the general assembly based upon the ombudsman's experience and expertise.

(3) The executive director shall administer the contract for the program independently of the divisions within the state department that are responsible for child welfare, youth corrections, or child care.

(4) The state department shall develop policies and procedures and shall promulgate in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., any rules necessary for the implementation, operation, and administration of the program.

(5) The executive director shall be responsible for overseeing the contract for the program and shall provide training and other assistance to the ombudsman and employees of the program to ensure that the program operates in compliance with the provisions of this

article and with the terms, performance measures, and accountability requirements in the contract, as well as state and federal laws relating to the child welfare system.

(6) Subject to the provisions of any contract awarded pursuant to section 19-3.3-106, and subject to available appropriations for the program, the state department shall provide for the availability of legal counsel to the ombudsman for the purpose of legal advice concerning performing the duties of the ombudsman, and may provide for legal representation of the ombudsman in any action brought against the ombudsman in connection with the duties of the ombudsman pursuant to this article.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 975, § 1, effective May 14.

19-3.3-103. Child protection ombudsman program - powers and duties - access to information - confidentiality - testimony. (1) In addition to any other duties specified in the detailed plan for the program developed pursuant to section 19-3.3-105, the ombudsman shall have the following duties:

(a) (I) (A) To receive complaints concerning child protection services made by or on behalf of a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, and well-being of the child. The ombudsman may investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.

(B) The ombudsman shall treat all complaints received pursuant to sub-subparagraph (A) of this subparagraph (I) as confidential, including the identities of complainants and individuals from whom information is acquired; except that disclosures may be permitted if the ombudsman deems it necessary to enable the ombudsman to perform his or her duties and to support any recommendations resulting from an investigation. Records relating to complaints received by the program and the investigation of complaints are exempt from public disclosure pursuant to article 72 of title 24, C.R.S.

(II) (A) In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.

(B) Nothing in the provisions of sub-subparagraph (A) of this subparagraph (II) shall be construed to grant subpoena power to the ombudsman for purposes of investigating a complaint pursuant to sub-subparagraph (A) of subparagraph (I) of this paragraph (a).

(III) The ombudsman shall refer any complaints relating to the judicial department and judicial proceedings, including but not limited to complaints concerning the conduct of judicial officers or attorneys of record, judicial determinations, and court processes and procedures to the appropriate entity or agency within the judicial department.

(b) To evaluate and make a recommendation to the executive director and any appropriate agency or entity for the creation of a statewide grievance policy that is accessible by children and families within the child protection system and that is transparent and accountable; and

(c) To report at least annually, pursuant to section 19-3.3-108, concerning the actions taken by the ombudsman with respect to the goals and duties of the program.

(2) In addition to any other duties specified in the detailed plan for the program developed pursuant to section 19-3.3-105, the ombudsman shall have the following powers:

(a) To review issues raised by members of the community relating to child protection policies or procedures and make recommendations to the appropriate agency or entity concerning those issues;

(b) To review and evaluate the effectiveness and efficiency of any existing grievance resolution mechanisms and to make recommendations to the executive director and any appropriate agency or entity for the improvement of the grievance resolution mechanisms;

(c) To help educate the public concerning child maltreatment and the role of the community in strengthening families and keeping children safe;

(d) To promote best practices and effective programs relating to a publicly funded child protection system and to work collaboratively with county departments, when appropriate, regarding improvement of processes; and

(e) To recommend to the executive director and any appropriate agency or entity statutory, budgetary, regulatory, and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.

(3) An agency or organization that is awarded the contract for the operation of the program, the ombudsman, employees of the program, and any persons acting on behalf of the program shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records.

(4) Nothing in this article shall be construed to direct or authorize the ombudsman to intervene in any criminal or civil judicial proceeding or to interfere in a criminal investigation.

(5) The ombudsman shall act independently of the divisions within the state department that are responsible for child welfare, youth corrections, or child care and of the county departments in the performance of his or her duties. Any recommendations made by the ombudsman or positions taken by the ombudsman do not necessarily reflect those of the state department or of the county departments.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 976, § 1, effective May 14.

19-3.3-104. Qualified immunity. The ombudsman and employees or persons acting on behalf of the program shall be immune from suit and liability, either personally or in their official capacities, for any claim for damage to or loss of property, or for personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred within the scope of employment, duties, or responsibilities pertaining to the program, including but not limited to issuing reports or recommendations; except that nothing in this section shall be construed to protect such persons from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 978, § 1, effective May 14.

19-3.3-105. Selection of advisory work group - development of detailed plan. (1) Within forty-five days after May 14, 2010, the executive director shall convene a voluntary work group, referred to in this article as the "work group". The work group shall be selected pursuant to subsection (2) of this section and shall consist of persons with expertise in issues relating to the publicly funded child protection system and interest in assisting and advising the executive director with respect to the development of a detailed plan, referred to in this article as the "detailed plan", for the establishment and operation of the program.

(2) (a) The president of the senate and the minority leader of the house of representatives shall each select one member from their respective chambers to serve on the work group. The remaining members shall be selected by the governor. The work group may include representation from county departments, county attorneys, county commissioners, the judicial department, mandatory reporters, service providers, persons or family members of persons who have had prior involvement as children with the child welfare system, child protection advocates, and law enforcement agencies.

(b) The governor shall establish a process by which persons interested in participating in the work group may submit letters of interest to the governor. Potential members of the work group shall advise the governor of any conflicts of interest that they may have with respect to participating in the work group. The membership of the work group shall, to the extent practicable, include persons from throughout the state and reflect the ethnic diversity of the state, and members of the work group shall participate in the work group without compensation.

(3) The executive director, or his or her designee, may convene the work group without all members present and may organize subcommittees consisting of work group members and any other persons invited to participate by the executive director.

(4) Within ninety days after the work group is initially convened, the executive director, with the assistance of the work group, shall complete a written, detailed plan for the establishment and operation of the program that shall include, but need not be limited to, the powers and duties of the program as provided in section 19-3.3-103, the qualifications and professional designations appropriate for the ombudsman, and specific performance benchmarks for the program. Upon completion of the detailed plan, the executive director shall provide a copy of the detailed plan to the health and human services committees of the senate and the house of representatives, or any successor committees, and shall post the detailed plan on the web site of the state department. The members of the work group shall also advise the executive director with respect to the length of the contract and the criteria for the request for proposals relating to the contract for the operation of the program. The work group is encouraged to consider a multiple-year contract for the operation of the program.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 978, § 1, effective May 14.

19-3.3-106. Award of contract. (1) (a) Subject to the provisions of subsection (2) of this section, within thirty days after completion of the detailed plan pursuant to section 19-3.3-105, the executive director, in accordance with the "Procurement Code", articles 101 to 112 of title 24, C.R.S., shall issue the request for proposals for the administration of the program. The proposal submission period, the review of submissions, and the award of the contract shall be completed within sixty days after the issuance of the request for proposals.

(b) The request for proposals shall include language prohibiting the award of the contract to a contractor who will continue to be involved in providing child protection services or involved in the legal representation of children after the award of the contract or who has any other conflict of interest or who is unable to independently and impartially perform the duties of the program.

(2) Notwithstanding any provisions of this article to the contrary, the executive director shall not award a contract for the operation of the program until such time as the executive director determines that sufficient moneys are available or have been committed for the operation of the program.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 979, § 1, effective May 14.

19-3.3-107. Child protection ombudsman program fund - created. (1) There is hereby created in the state treasury the child protection ombudsman program fund, referred to in this article as the "fund". The fund shall consist of any moneys that may be appropriated to the fund by the general assembly and any gifts, grants, or donations that may be credited to the fund pursuant to subsection (2) of this section.

(2) The state department is authorized to seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this article; except that the state department may not accept a gift, grant, or donation that creates the appearance of impropriety, that the executive director determines is contrary to the best interests of the program, or that is subject to conditions that are inconsistent with this article or any other state or federal law. The state department shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the fund.

(3) The moneys in the fund are continuously appropriated to the state department for the direct and indirect costs associated with implementing this article.

(4) Any moneys in the fund not expended for the purposes of this article may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert or be credited or transferred to the general fund or to another fund.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 980, § 1, effective May 14.

19-3.3-108. Child protection ombudsman program - annual report. (1) On or before September 1 of each year, commencing with the September 1 following the first fiscal year in which the program is implemented, the ombudsman shall prepare a written report that shall include, but need not be limited to, information from the preceding fiscal year and any recommendations concerning the following:

(a) Actions taken by the ombudsman relating to the duties of the program set forth in section 19-3.3-103;

(b) Statutory, regulatory, budgetary, or administrative changes relating to child protection, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child welfare services in Colorado.

(2) The ombudsman shall transmit the annual report to the executive director for review and comment. The executive director shall distribute the report to the governor and to the health and human services committees of the house of representatives and of the senate, or any successor committees. The ombudsman shall present the report to the health and human services committees of the house of representatives and of the senate, or any successor committees, upon request of those committees.

(3) The state department shall post the annual report issued by the ombudsman to the web site of the state department.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 980, § 1, effective May 14.

19-3.3-109. Review by the state auditor's office. The state auditor shall conduct or cause to be conducted a performance and fiscal audit of the program at the beginning of the third year of operation of the program, or pursuant to the time frame recommended in the detailed plan developed pursuant to section 19-3.3-105, whichever date is sooner. Thereafter, at the discretion of the legislative audit committee, the state auditor shall conduct or cause to be conducted a performance and fiscal audit of the program.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 981, § 1, effective May 14.

ARTICLE 3.5

Colorado Children's Trust Fund

19-3.5-101.	Short title.	19-3.5-106.	Colorado children's trust fund - creation - source of funds.
19-3.5-102.	Legislative declaration.		
19-3.5-103.	Definitions. (Repealed)	19-3.5-107.	Disbursement of grants from the trust fund.
19-3.5-104.	Colorado children's trust fund board - creation - members.	19-3.5-108.	Repeal of article. (Repealed)
19-3.5-105.	Powers and duties of the board.	19-3.5-109.	Report - repeal of article.

19-3.5-101. Short title. This article shall be known and may be cited as the "Colorado Children's Trust Fund Act".

Source: L. 89: Entire article added, p. 933, § 1, effective July 1.

19-3.5-102. Legislative declaration. (1) The general assembly hereby finds that child abuse and neglect are a threat to the family unit and impose major expenses on society. The general assembly further finds that there is a need to assist private and public agencies in identifying, planning, and establishing statewide programs for the prevention of child abuse and neglect.

(2) It is the purpose of this article to promote primary and secondary prevention and education programs that are designed to lessen the occurrence of child abuse and neglect and to reduce the need for state intervention in child abuse and neglect prevention and education.

Source: L. 89: Entire article added, p. 933, § 1, effective July 1. **L. 92:** (1) amended, p. 181, § 1, effective May 14. **L. 2012:** (2) amended, (SB 12-064), ch. 56, p. 204, § 1, effective March 24.

19-3.5-103. Definitions. (Repealed)

Source: L. 89: Entire article added, p. 933, § 1, effective July 1. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-3.5-104. Colorado children's trust fund board - creation - members. (1) There is hereby created, in the department of public health and environment, the Colorado children's trust fund board. The board shall exercise its powers and duties as if transferred by a **type 2** transfer.

(2) The board shall consist of nine members, as follows:

(a) The executive director of the department of human services or his designee;

(a.5) The executive director of the department of public health and environment or such director's designee;

(b) The commissioner of education or his designee; and

(c) Six persons appointed by the governor and confirmed by the senate, five of whom shall be knowledgeable in the area of child abuse prevention and represent some of the following areas: Law enforcement; medicine; law; business; mental health; domestic relations; child abuse prevention; education; and social work; and one who shall be a parent or a representative of a parent organization. In making appointments to the board, the governor is encouraged to include representation by at least one member who is a person with a disability, as defined in section 24-45.5-102 (2), C.R.S., a family member of a person with a disability, or a member of an advocacy group for persons with disabilities, provided that the other requirements of this paragraph (c) are met.

(3) (a) Each appointed member of the board shall serve for a term of three years; except that the original members appointed by the governor shall serve staggered terms not to exceed three years, to be decided by the board.

(b) A vacancy on the board shall be filled for the balance of the unexpired term.

(4) The board shall meet regularly and shall adopt its own rules of procedure.

(5) Members shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

Source: L. 89: Entire article added, p. 934, § 1, effective July 1. **L. 93:** (1), IP(2), and (2)(c) amended and (2)(a.5) added, p. 926, § 2, effective May 28. **L. 94:** (2)(a) and (2)(a.5) amended, pp. 2687, 2737, §§ 208, 365, effective July 1. **L. 2000:** (1) amended, p. 1569, § 3, effective July 1. **L. 2009:** (2)(c) amended, (HB 09-1281), ch. 399, p. 2153, § 1, effective August 5.

19-3.5-105. Powers and duties of the board. (1) The board shall have the following powers and duties:

(a) To provide for the coordination and exchange of information on the establishment and maintenance of primary and secondary prevention programs;

(b) To develop and publicize criteria regarding grants from the trust fund, including the duration of grants and any requirements for matching funds which are received from the trust fund;

(c) To review and monitor the expenditure of moneys by recipients;

(d) Repealed.

(e) To accept grants from the federal government as well as to solicit and accept contributions, grants, gifts, bequests, and donations from individuals, private organizations, and foundations;

(f) To expend moneys of the trust fund for the establishment, promotion, and maintenance of primary and secondary prevention programs, including pilot programs, for programs to prevent and reduce the occurrence of prenatal drug exposure, and for operational expenses of the board;

(g) To sue and be sued as a board without individual liability for acts of the board;

(h) To exercise any other powers or perform any other duties which are consistent with the purposes for which the board was created and which are reasonably necessary for the fulfillment of the board's responsibilities.

(i) and (j) Repealed.

Source: L. 89: Entire article added, p. 934, § 1, effective July 1. **L. 92:** (1)(f) amended, p. 181, § 2, effective May 14. **L. 96:** (1)(d) repealed, p. 1246, § 115, effective August 7. **L. 2000:** (1)(j) repealed, p. 1570, § 4, effective July 1. **L. 2007:** (1)(i) amended, p. 2031, § 41, effective June 1. **L. 2008:** (1)(i) repealed, p. 687, § 1, effective August 5. **L. 2012:** (1)(a) and (1)(f) amended, (SB 12-064), ch. 56, p. 204, § 2, effective March 24.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (1)(d), see section 1 of chapter 237, Session Laws of Colorado 1996.

19-3.5-106. Colorado children's trust fund - creation - source of funds. (1) There is hereby created in the state treasury the Colorado children's trust fund, which shall be administered by the board and which shall consist of:

(a) All moneys which shall be transferred thereto in accordance with section 13-32-101 (5) (a) (I), C.R.S.; and

(b) All moneys collected by the board pursuant to section 19-3.5-105 (1) (e) from federal grants and other contributions, grants, gifts, bequests, donations, and any moneys appropriated thereto by the state. Such moneys shall be transmitted to the state treasurer for credit to the trust fund.

(2) All moneys in the fund shall be subject to annual appropriation by the general assembly. Any moneys not appropriated shall remain in the fund and shall not be transferred

to or revert to the general fund of the state at the end of any fiscal year. Any interest earned on the investment or deposit of moneys in the fund shall also remain in the fund and shall not be credited to the general fund of the state.

(3) Repealed.

Source: L. 89: Entire article added, p. 935, § 1, effective July 1. **L. 92:** (1)(b) amended, p. 181, § 3, effective May 14. **L. 2000:** (1)(a) amended, p. 1570, § 5, effective July 1. **L. 2003:** (3) added, p. 455, § 8, effective March 5. **L. 2004:** (3) repealed, p. 194, § 11, effective August 4. **L. 2011:** (1)(a) amended, (HB 11-1303), ch. 264, p. 1158, § 36, effective August 10.

19-3.5-107. Disbursement of grants from the trust fund. (1) Grants may be awarded to provide moneys for the start-up, continuance, or expansion of primary or secondary prevention programs, including pilot programs and home visitation programs, to provide educational and public informational seminars, and to study and evaluate primary and secondary prevention programs, pilot programs, and home visitation programs. In addition, grants may be awarded for programs to prevent and reduce the occurrence of prenatal drug exposure.

(2) The board shall have discretion in determining the amount of money to be awarded under each grant; except that:

(a) Until the total amount of assets in the trust fund exceeds five million dollars, not more than seventy-five percent of the moneys credited to the trust fund each year pursuant to section 13-32-101 (5) (a) (I), C.R.S., plus any interest credited thereon to the trust fund during the previous year shall be available for disbursement or expenditure by the board; however, any other moneys deposited or maintained in the fund may be disbursed by the board pursuant to the provisions of this article in accordance with an appropriation from the fund made by the general assembly;

(b) After such time that the state treasurer certifies that the assets in the trust fund exceed five million dollars, no further moneys shall be collected for the trust fund pursuant to section 13-32-101 (5) (a) (I), C.R.S.; however, nothing in this paragraph (b) shall be construed to prohibit the continued collection of moneys for the trust fund pursuant to section 19-3.5-105 (1) (e);

(c) After such time that the state treasurer certifies that the assets in the trust fund exceed five million dollars, only the interest credited to the trust fund, together with any moneys collected for such fund pursuant to section 19-3.5-105 (1) (e), shall be available for disbursement or expenditure by the board.

(3) Any grant or moneys received by the board and credited to the trust fund pursuant to section 19-3.5-106 (1) (b) shall not be subject to the disbursement restriction of paragraph (a) of subsection (2) of this section.

Source: L. 89: Entire article added, p. 935, § 1, effective July 1. **L. 92:** Entire section amended, p. 182, § 4, effective May 14. **L. 94:** (2)(a) amended, p. 1290, § 1, effective July 1. **L. 2000:** (2) amended, p. 1570, § 6, effective July 1. **L. 2011:** (2) amended, (HB 11-1303), ch. 264, p. 1158, § 37, effective August 10. **L. 2012:** (1) amended, (SB 12-064), ch. 56, p. 204, § 3, effective March 24.

Editor's note: Although the amending clause in House Bill 11-1303 indicated that all of subsection (2) was amended, only subsections (2)(a) and (2)(b) appeared in the final act.

19-3.5-108. Repeal of article. (Repealed)

Source: L. 89: Entire article added, p. 936, § 1, effective July 1. **L. 93:** Entire section repealed, p. 927, § 3, effective May 28.

19-3.5-109. Report - repeal of article. (1) The department of public health and environment shall contract for an independent evaluation of the trust fund, including

administrative costs of operating the trust fund and the cost-effectiveness and the impact of the grants on reducing and preventing child abuse. A report of such evaluation shall be provided to the house and senate health and human services committees, or any successor committees, by November 1, 2011, and by November 1, 2021.

(2) This article is repealed, effective July 1, 2022.

Source: L. 2000: Entire section added, p. 1570, § 7, effective July 1. **L. 2002:** Entire section amended, p. 40, § 1, effective March 21. **L. 2003:** (1) amended, p. 2006, § 80, effective May 22. **L. 2007:** (1) amended, p. 2031, § 42, effective June 1. **L. 2012:** Entire section amended, (SB 12-064), ch. 56, p. 205, § 4, effective March 24.

ARTICLE 4

Uniform Parentage Act

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Law reviews: For article, "Paternity Testing in the Age of DNA", see 19 Colo. Law. 2061 (1990); for article, "In Vitro Fertilization and Surrogacy: Following the Intent of the Parties", see 24 Colo. Law. 1535 (1995).

19-4-101. Short title.
19-4-102. Parent and child relationship defined.
19-4-103. Relationship not dependent on marriage.
19-4-104. How parent and child relationship established.
19-4-105. Presumption of paternity.
19-4-105.5. Commencement of proceedings - summons - automatic temporary injunction - enforcement.
19-4-105.6. Amendment of proceedings - adding children.
19-4-106. Assisted reproduction.
19-4-107. Determination of father and child relationship - who may bring action - when action may be brought.
19-4-107.3. When determination of parentage is final - modifications - exceptions.
19-4-107.5. Required notice of prior civil protection orders to prevent domestic abuse - determination of parent and child relationship.
19-4-108. Statute of limitations.
19-4-109. Jurisdiction - venue.
19-4-110. Parties.
19-4-111. Pretrial proceedings.
19-4-112. Genetic or other tests.
19-4-113. Evidence relating to paternity.
19-4-114. Pretrial recommendations - temporary orders.
19-4-115. Civil action.
19-4-116. Judgment or order - birth-related costs - evidence.
19-4-117. Costs.
19-4-118. Enforcement of judgment or order.
19-4-119. Modification of judgment or order.
19-4-120. Represented by counsel.
19-4-121. Hearings and records - confidentiality. (Repealed)
19-4-122. Action to declare mother and child relationship.
19-4-123. Promise to render support.
19-4-124. Birth records.
19-4-125. "Father" defined.
19-4-126. Uniformity of application and construction.
19-4-127. Severability.
19-4-128. Right to trial to court.
19-4-129. Child support - guidelines - schedule of basic support obligations.
19-4-130. Temporary orders.

19-4-101. Short title. This article shall be known and may be cited as the "Uniform Parentage Act".

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R.McG. v. J.W.", see 59 Den. L.J. 157 (1981).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where he was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

And denial of standing unconstitutional. The juvenile court's construction of this article denying a claiming natural father not married to the natural mother statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child violated equal protection of the laws under the fourteenth amendment to the United States constitution, § 25 of art. II, Colo. Const., and the equal rights amendment to the Colorado constitution, § 29 of art. II, Colo. Const. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Test for in personam jurisdiction over child. The test to be applied in determining whether a court has in personam jurisdiction over a child in a paternity action is whether the child has certain minimum contacts so that "the maintenance of the suit does not offend traditional notions of fair play and substantial justice". Smith v. Casey, 198 Colo. 433, 601 P.2d 632 (1979).

19-4-102. Parent and child relationship defined. As used in this article, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. "Parent and child relationship" includes the mother and child relationship and the father and child relationship.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den L.J. 157 (1981). For comment, "The Unwed Father's Parental Rights and Obligations After S.P.B.: A Retreat in Constitutional Protection", see 60 Den. L.J. 659 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

The definition of a "parent and child relationship" applies to a parent and child relationship once it has been declared and clarifies that it is the legal equivalent of the traditional relationships recognized between children and their adoptive or natural parents. A presumed father's admission that he is not the biological parent does not necessarily rebut the presumption of fatherhood that arises by receiving the child into his home and openly holding that child out as his natural child when no judgment has been entered that establishes the paternity of another man. In re A.D., 240 P.3d 488 (Colo. App. 2010).

Applied in People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

19-4-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For comment, "The Unwed Father's Parental Rights and Obligations After S.P.B.: A Retreat in Constitutional Protection", see 60 Den. L.J. 659 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Applied in People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

19-4-104. How parent and child relationship established. The parent and child relationship may be established between a child and the natural mother by proof of her having given birth to the child or by any other proof specified in this article, between a child and the natural father pursuant to the provisions of this article, or between a child and an adoptive parent by proof of adoption.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Section authorizes establishment of paternal relationship between a child and its natural father and recognizes the right of putative fathers to bring an action to establish paternity under the applicable provisions of this article. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where he was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

19-4-105. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity of marriage, dissolution of marriage, or divorce, or after a decree of legal separation is entered by a court;

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(I) If the attempted marriage could be declared invalid only by a court, the child is born

during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity of marriage, dissolution of marriage, or divorce; or

(II) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(I) He has acknowledged his paternity of the child in writing filed with the court or registrar of vital statistics, if such acknowledgment has not previously become a legal finding pursuant to paragraph (b) of subsection (2) of this section;

(II) With his consent, he is named as the child's father on the child's birth certificate; or

(III) He is obligated to support the child under a written voluntary promise or by court order or by an administrative order issued pursuant to section 26-13.5-110, C.R.S.;

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child;

(e) He acknowledges his paternity of the child in a writing filed with the court or registrar of vital statistics, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the court or registrar of vital statistics, if such acknowledgment has not previously become a legal finding pursuant to paragraph (b) of subsection (2) of this section. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(f) The genetic tests or other tests of inherited characteristics have been administered as provided in section 13-25-126, C.R.S., and the results show that the alleged father is not excluded as the probable father and that the probability of his parentage is ninety-seven percent or higher.

(2) (a) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man. In determining which of two or more conflicting presumptions should control, based upon the weightier considerations of policy and logic, the judge or magistrate shall consider all pertinent factors, including but not limited to the following:

(I) The length of time between the proceeding to determine parentage and the time that the presumed father was placed on notice that he might not be the genetic father;

(II) The length of time during which the presumed father has assumed the role of father of the child;

(III) The facts surrounding the presumed father's discovery of his possible nonpaternity;

(IV) The nature of the father-child relationship;

(V) The age of the child;

(VI) The relationship of the child to any presumed father or fathers;

(VII) The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and

(VIII) Any other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed father or fathers or the chance of other harm to the child.

(b) A duly executed voluntary acknowledgment of paternity shall be considered a legal finding of paternity on the earlier of:

(I) Sixty days after execution of such acknowledgment; or

(II) On the date of any administrative or judicial proceeding pursuant to this article or any administrative or judicial proceeding concerning the support of a child to which the signatory is a party.

(c) Except as otherwise provided in section 19-4-107.3, a legal finding of paternity may be challenged in court only on the basis of fraud, duress, or mistake of material fact, with the burden of proof upon the challenger. Any legal responsibilities resulting from signing an acknowledgment of paternity, including child support obligations, shall continue during any challenge to the finding of paternity, except for good cause shown.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1. **L. 89:** (1)(c)(III) amended, p. 1247, § 3, effective April 1. **L. 91:** (1)(f) amended, p. 253, § 10, effective July 1. **L. 97:** (1)(c)(I), (1)(e), and (2) amended, p. 1274, § 13, effective July 1. **L. 2003:** (2)(a) amended, p. 1268, § 59, effective July 1. **L. 2008:** (2)(c) amended, p. 1656, § 2, effective August 15.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-6-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1997 act amending subsections (1)(c)(I), (1)(e), and (2), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Legal Protection of Children in Nontraditional Families", see 29 Colo. Law. 79 (November 2000). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section 19-6-104 authorizes establishment of paternal relationship between child and its natural father and recognizes the right of putative fathers to bring an action to establish paternity under the applicable provisions of this article. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where he was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

And denial of standing unconstitutional. The juvenile court's construction of this article denying a claiming natural father not married to the natural mother statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child violated equal protection of the laws under the fourteenth amendment to the United States constitution, § 25 of art. II, Colo. Const., and the equal rights amendment to the Colorado constitution, § 29 of art. II, Colo. Const. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Presumed father under subsection (1)(d). When man received child into his home and openly held out the child as his natural child, he is presumed to be the father, and it is an error for court to dismiss in summary judgment proceedings. D.S.P. v. R.L.K., 677 P.2d 959 (Colo. App. 1983).

Nothing in the statutory provisions, whether read separately or together, provides that an admission by a man seeking parental rights that he is not the child's biological father conclusively rebuts the presumption under this section. A presumed father's admission that he is not the biological parent does not necessarily rebut the presumption of fatherhood that arises by receiving the child into his home and openly holding that child out as his natural child when no judgment has been entered that establishes the paternity of another man. In re A.D., 240 P.3d 488 (Colo. App. 2010).

Presumption is procedural, and retroactive application is proper where action commenced prior to enactment of this section. People in Interest of R.F.A., 744 P.2d 1202 (Colo. App. 1987).

Any presumption of paternity established under this section may be rebutted in an appropriate action by clear and convincing evidence or by a court decree establishing paternity of the child by another man. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

When presumptions of paternity arise in more than one potential father, trial courts must take the best interests of the child into

account as part of policy and logic in resolving competing presumptions. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000); In re Ohr, 97 P.3d 354 (Colo. App. 2004).

The court should consider all the facts and circumstances of the case that bear directly on the child's best interests when competing presumptions of paternity arise. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000).

The evidentiary standard for determining the weightier considerations of policy and logic is preponderance of the evidence. Once competing presumptions of fatherhood have been established that have not been rebutted by clear and convincing evidence, the court must resolve the issue of paternity by considering the best interests of the child and determining the weightier issues of policy and logic by applying a preponderance of the evidence standard. People ex rel. C.L.S., __ P.3d __ (Colo. App. 2011).

Presumption not overcome when defendant in personal injury action failed to introduce any evidence that plaintiff's decedent was not plaintiff's father, other than the fact that plaintiff's mother was still legally married to someone else. Trial court, therefore, properly directed verdict in favor of plaintiff on the issue of paternity. Lawrence v. Taylor, 8 P.3d 607 (Colo. App. 2000).

It is clear from subsection (1)(a) of this section and § 19-4-107 (1)(b) that a man presumed to be a child's father by reason of his marriage to the child's mother at the time of conception is precluded from initiating an action to declare the nonexistence of the presumed father and child relationship after the child reaches the age of five. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

In cases in which paternity is disputed, whether in a proceeding under this article or article 6, paternity must be determined according to the procedures outlined under this article before the legal obligation for support can be imposed. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

An interpretation of § 19-4-107 (1)(b) that would deny the right of a presumptive father to defend against a child support action by asserting the nonexistence of a father and child relationship runs counter to principles of statutory construction and would produce results not consistent with the welfare of the affected children and the best interests of society. In a child support action under article 6 of this title, the defense of nonpaternity may be asserted by a man presumed to be the father pursuant to subsection (1)(a) of this section notwithstanding that the man would have been precluded by § 19-4-107 (1)(b) from bringing an action under this article to declare the nonexistence of the father and child relationship because of the passage of time. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Applicability of doctrine of res judicata. Failure to raise the defense of nonpaternity during dissolution proceedings bars a presumed father from collaterally attacking the determination of paternity implicitly supporting award of child support incident to such dissolution proceedings brought under URESA. State ex rel. Daniels v. Daniels, 817 P.2d 632 (Colo. App. 1991).

A challenge to a paternity judgment on the basis of mistake of material fact, pursuant to subsection (2)(c), must be brought within the six-month time limit of C.R.C.P. 60(b). People ex rel. J.A.U. v. R.L.C., 47 P.3d 327 (Colo. 2002).

For evidence sufficient to show nonaccess, see M.W. and A.W. v. D.G., 710 P.2d 1174 (Colo. App. 1985).

Provisions of section extended to maternity determinations when read together with §§ 19-4-122 and 19-4-125. In re S.N.V., __ P.3d __ (Colo. App. 2011).

Woman may gain the status of a child's natural mother even if she has no biological tie to the child just as a father may establish such status through other proof. Therefore trial court erred in concluding that birth mother's claim automatically prevailed over that of father's wife. In re S.N.V., __ P.3d __ (Colo. App. 2011).

Applied in Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980); K.H.R. By and Through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

19-4-105.5. Commencement of proceedings - summons - automatic temporary injunction - enforcement. (1) All proceedings under this article shall be commenced in the manner provided by the Colorado rules of civil procedure or as otherwise provided in this section or section 26-13.5-104, C.R.S.

(2) Upon commencement of a proceeding under this article by one of the parties, the other parties shall be served in the manner set forth in section 19-4-109 (2), the Colorado rules of civil procedure, or as otherwise provided in section 26-13.5-104, C.R.S.

(2.5) Upon the commencement of a proceeding under this article, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child who is the subject of the proceeding under this article.

(3) Proceedings under this article may be commenced prior to the birth of a child.

(4) If a petition is filed by an alleged father or possible father pursuant to the requirements of section 19-5-103.7, the licensed child placement agency involved shall receive notice of the action in the same manner as a party to the action.

(5) A summons issued upon commencement of a proceeding under this article shall contain the following advisements and notice:

(a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S.;

(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date; and

(c) (I) That, except in proceedings initiated pursuant to section 19-1-117 or in proceedings initiated by a delegate child support enforcement unit, as defined in section 26-13-102.5 (1), C.R.S., pursuant to article 13 or 13.5 of title 26, C.R.S., or article 5 of title 14, C.R.S., upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary injunction shall be in effect against both parties:

(A) Enjoining each party from molesting or disturbing the peace of the other party;

(B) Restraining each party from removing a minor child who is the subject of a proceeding under this article from the state without the consent of all other parties or an order of the court modifying the injunction; and

(C) Restraining each party, without at least fourteen days' advance notification and the written consent of all other parties or an order of the court modifying the injunction, from cancelling, modifying, terminating, or allowing to lapse for nonpayment of premiums, a policy of health insurance or life insurance that provides coverage to a minor child who is the subject of the proceeding or that names the minor child as a beneficiary of a policy.

(II) The temporary injunction shall be in effect upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent and shall remain in effect for one hundred twenty days after its effective date unless all parties consent to a modification of the temporary injunction. The court may, upon the motion of a party or upon its own motion, modify the length of time the temporary injunction is in effect to a shorter or longer period of time as the court deems appropriate.

(6) The provisions of the temporary injunction described in subsection (5) of this section shall be printed on the summons and the petition. A party may apply to the court for further temporary orders, an expanded temporary injunction, or modification or revocation of the temporary injunction.

(7) For purposes of enforcing the automatic temporary injunction described in paragraph (c) of subsection (5) of this section, if a respondent shows a duly authorized peace officer, as described in section 16-2.5-101, C.R.S., a copy of the petition and summons filed and issued pursuant to this section, or if a petitioner shows the peace officer a copy of the petition and summons filed and issued pursuant to this section together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of the part of the automatic temporary injunction that enjoins a party from molesting or disturbing the peace of the other party has occurred, the peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent, as applicable. A peace officer shall not be held civilly or criminally liable for his or her actions pursuant to this subsection (7) if the peace officer acts in good faith and without malice.

Source: L. 94: Entire section added, p. 1541, § 13, effective May 31. **L. 96:** Entire section amended, p. 612, § 13, effective July 1. **L. 2005:** (3) and (4) added, p. 102, § 3, effective July 1; (5) added, p. 378, § 3, effective January 1, 2006. **L. 2006:** (5)(b) amended, p. 516, § 2, effective August 7. **L. 2010:** (5) amended and (6) and (7) added, (HB 10-1097), ch. 39, p. 158, § 1, effective August 15. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 119, § 5, effective August 10.

19-4-105.6. Amendment of proceedings - adding children. (1) In any existing case commenced under this article, if it is alleged that another child has been conceived of the parents named in the existing case, that child shall be added to the existing case if at least one of the presumptions of paternity specified in section 19-4-105 applies for the purpose of establishing paternity and child support. The caption shall be amended to include the added child.

(2) The party amending the petition pursuant to subsection (1) of this section shall serve the amended petition with the new caption upon the other parties in the manner set forth in section 19-4-109 (2), the Colorado rules of civil procedure, or as otherwise provided in section 26-13.5-104, C.R.S.

(2.5) The party amending the petition pursuant to subsection (1) of this section shall provide to the court, in the manner prescribed by the court, the social security number of the added child.

(3) Proceedings under this article may be amended prior to the birth of the child to be added to the proceedings.

(4) If a petition is amended pursuant to the requirements of section 19-5-103.7, the licensed child placement agency involved shall receive notice of the action in the same manner as a party to the action.

(5) A summons issued upon the amendment of a proceeding under this article shall contain the advisements set forth in section 19-4-105.5 (5).

(6) Notwithstanding the provisions of subsection (1) of this section, in any case where there exists more than one alleged or presumed father for a child pursuant to section 19-4-105, a new case shall be commenced for that child to determine the child's paternity, establish child support, and address any other related issues. If it is determined that the child is the child of parents named in an existing case, the cases shall be consolidated into the initial action pursuant to rule 42 of the Colorado rules of civil procedure.

Source: L. 2008: Entire section added, p. 1348, § 3, effective January 1, 2009. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 120, § 6, effective August 10.

19-4-106. Assisted reproduction. (1) If, under the supervision of a licensed physician or advanced practice nurse and with the consent of her husband, a wife consents to assisted reproduction with sperm donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. If, under the supervision of a licensed physician or advanced practice nurse and with the consent of her husband, a wife consents to assisted reproduction with an egg donated by another woman, to conceive a child for herself, not as a surrogate, the wife is treated in law as if she were the natural mother of a child thereby conceived. Both the husband's and the wife's consent must be in writing and signed by each of them. The physician or advanced practice nurse shall certify their signatures and the date of the assisted reproduction and shall file the consents with the department of public health and environment, where they shall be kept confidential and in a sealed file; however, the physician's failure to do so does not affect the father and child relationship or the mother and child relationship. All papers and records pertaining to the assisted reproduction, whether part of the permanent record of a court or of a file held by the supervising physician or advanced practice nurse or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) A donor is not a parent of a child conceived by means of assisted reproduction, except as provided in subsection (3) of this section.

(3) If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in subsection (1) of this section, he is the father of the resulting child.

(4) The requirement for consent set forth in subsection (1) of this section does not apply to the donation of eggs by a married woman for assisted reproduction by another woman or to the donation of sperm by a married man for assisted reproduction by a woman who is not his wife.

(5) Failure of the husband to sign a consent required by subsection (1) of this section before or after the birth of the child does not preclude a finding that the husband is the father of a child born to his wife pursuant to section 19-4-105 (2) (a).

(6) If there is no signed consent form, the nonexistence of the father-child relationship shall be determined pursuant to section 19-4-107 (1) (b).

(7) (a) If a marriage is dissolved before placement of eggs, sperm, or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if assisted reproduction were to occur after a dissolution of marriage, the former spouse would be a parent of the child.

(b) The consent of a former spouse to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos.

(8) If a spouse dies before placement of eggs, sperm, or embryos, the deceased spouse is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased spouse would be a parent of the child.

(9) This section does not apply to the birth of a child conceived by means of sexual intercourse.

(10) For purposes of this section, "donor" is defined in section 19-1-103 (44.5).

Source: L. 87: Entire title R&RE, p. 794, § 1, effective October 1. **L. 94:** (1) amended, p. 2737, § 366, effective July 1. **L. 2003:** Entire section amended, p.1269, § 60, effective July 1. **L. 2008:** (1) amended, p. 128, § 9, effective January 1, 2009.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-6-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "In the Interest of R.C., Minor Child: The Colorado Artificial Insemination by Donor Statute and the Non-Traditional Family", see 67 Den. U. L. Rev. 79 (1990). For article, "Assisted Reproduction in Colorado: Legal Aspects and Recent Legislation", see 33 Colo. Law. 77 (June 2004). For article, "Assisted Reproduction and Colorado Law: Unanswered Questions and Future Challenges", see 35 Colo. Law. 39 (November 2006). For article, "Frozen in Time: Planning for the Posthumously Conceived Child", see 37 Colo. Law. 45 (June 2008).

In cases in which paternity is disputed, whether in a proceeding under this article or article 6, paternity must be determined according to the procedures outlined under this article before the legal obligation for support can be imposed. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

An interpretation of § 19-4-107 (1)(b) that would deny the right of a presumptive father to defend against a child support action by asserting the nonexistence of a father and child relationship runs counter to principles of statutory construction and would produce results not consistent with the welfare of the affected children and the best interests of society. In a child support action under article 6 of this title, the defense of nonpaternity may be asserted by a man presumed to be the father pursuant to subsection (1)(a) of this section notwithstanding that the man would have been precluded by § 19-4-107 (1)(b) from bringing an action under this article to declare the nonexistence of the father and child relationship because of the passage of time. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

The primary purpose of this section is to provide a legal mechanism for married and unmarried women to obtain a supply of semen for use in artificial insemination and, in the case of married recipients, to make clear that legal rights and duties of fatherhood are borne by the recipient's husband rather than by the donor. In the Interest of R.C., 775 P.2d 27 (Colo. 1989).

The provisions of this section do not apply when the known semen donor and the unmarried recipient agree that the known donor would have parental rights and expressly agree at the time of insemination that the donor would be treated as the natural father of any child so conceived. In the Interest of R.C., 775 P.2d 27 (Colo. 1989).

Where issue of consent to artificial insemination was adjudicated and conclusively determined in dissolution of marriage action, doctrine of collateral estoppel bars relitigation of consent issue in subsequent suit against physician who performed procedure without plaintiff's written consent. Hill v. Hulet, 881 P.2d 460 (Colo. App. 1994).

19-4-107. Determination of father and child relationship - who may bring action - when action may be brought. (1) A child, his natural mother, or a man presumed to be

his father under section 19-4-105 (1) (a), (1) (b), or (1) (c) or the state, the state department of human services, or a county department of social services, pursuant to article 13 or 13.5 of title 26, C.R.S., or article 5 of title 14, C.R.S., may bring an action:

(a) At any time for the purpose of declaring the existence of the father and child relationship presumed under section 19-4-105 (1) (a), (1) (b), or (1) (c); or

(b) For the purpose of declaring the nonexistence of the father and child relationship presumed under section 19-4-105 (1) (a), (1) (b), or (1) (c) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts but in no event later than five years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Any interested party, including the state, the state department of human services, or a county department of social services, pursuant to article 13 or 13.5 of title 26, C.R.S., or article 5 of title 14, C.R.S., may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under section 19-4-105 (1) (d), (1) (e), or (1) (f).

(3) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 19-4-105 may be brought by the state, the state department of human services, a county department of social services, the child, the mother or personal representative of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(4) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 19-4-114 (2), between an alleged or presumed father and the mother or child does not bar an action under this section.

Source: L. 87: Entire title R&RE, p. 794, § 1, effective October 1. **L. 89:** IP(1) and (2) amended, p. 1247, § 4, effective April 1. **L. 94:** IP(1), (2), and (3) amended, p. 2687, § 209, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "A Lawyer's Advice to the Unmarried Mother", see 31 Dicta 112 (1954). For article, "One Year Review of Domestic Relations", see 41 Den. L. Ctr. J. 97 (1964). For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Purpose of article. The purpose of the paternity article of the Colorado Children's Code is to provide a means to establish accurately the identity of the father of the child so that the responsibility for support of the child can be determined and support ordered. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969); People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Different limitation periods for support and paternity not violative of equal protection. When a former statute provided that no proceeding to establish paternity or furnish support should be initiated after a child was five years old unless the father had acknowledged paternity in writing or by furnishing support, whereas proceedings to compel fathers of illegitimate children or other legally responsible persons to support a child might be filed any time before the child's eighteenth birthday, there was no violation of the equal protection clause. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Term "child" construed. To construe "child" so as to exclude an unborn child would permit the father of an unborn child to evade his responsibility for support by leaving the state at any time prior to the birth of the child. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

There was no ambiguity in the wording of articles 6 and 7 of the Colorado Children's Code. It was quite clear that paternity and support issues were to be determined under article 6 and article 7 was to be used only for the determination of support where paternity was not in dispute. It was error for the court to have conducted a paternity proceeding under the petition for support proceedings of article 7. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

The fact that a proceeding to determine paternity was not brought within the time permitted by former § 19-6-101(2), does not bar proceeding for support with respect to children born in wedlock. In such a case, the presumed father must be permitted to deny an obligation to support the child by denying paternity, and that issue must be resolved in the support proceeding. B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980); People in Interest of R.T.L., 756 P.2d 383 (Colo. App. 1987), aff'd, 780 P.2d 508 (Colo. 1989).

This article is the exclusive means of adjudicating contested paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

The issue of paternity may not be adjudicated as an adjunct of support proceedings. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Section 19-6-104 authorizes establishment of paternal relationship between child and its natural father and recognizes the right of putative fathers to bring an action to establish paternity under the applicable provisions of this article. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Right to paternity declaration not conditioned upon marriage to presumed father. Subsection (1)(b) does not condition the natural mother's right to seek a declaration of paternity in a nonspousal father upon the failure of her existing marriage to the presumed father, or the presumed father's desertion or nonsupport; it requires only that the natural mother's action be commenced within five years after the child's birth. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Paternity determination precedes support obligation. Before a duty to support can be imposed, it must first be established that the person upon whom the support obligation is to be imposed is, in truth, the father of the child. In re People in Interest of D.R.B., 30 Colo. App. 603, 498 P.2d 1166 (1972), aff'd, 180 Colo. 439, 507 P.2d 468 (1973).

Presumption of legitimacy in seeking support. A child born in wedlock who has the benefit of the strong presumption of legitimacy should reasonably be able to rely on that presumption in seeking support absent a judicial action by the presumed father, challenging paternity. B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

A showing of the child's neglect or dependency is not a condition precedent to a determination of paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

People had standing to bring action. Evidence showing that mother was receiving assistance from county department of public welfare for benefit of child was sufficient to allow the people to have standing to bring action to establish paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

A man claiming to be a child's biological father may commence an action under the Uniform Parentage Act without first having obtained genetic testing. In re S.R.H., 981 P.2d 199 (Colo. App. 1998), rev'd on other grounds sub nom. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where claimant was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

And denial of standing unconstitutional. The juvenile court's construction of this article denying a claiming natural father not married to the natural mother statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child violated equal protection of the laws under the fourteenth amendment to the United States constitution, § 25 of art. II, Colo. Const., and the equal rights amendment to the Colorado constitution, § 29 of art. II, Colo. Const. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

For case holding that under former law child was not party to paternity action, see People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

Burden of proof. Party bringing paternity action has burden of proving by a preponderance of the evidence that defendant is the child's father. Because sterility is a defense in the nature of evidence, the burden rests upon the proponent to establish it by a preponderance of the evidence. C.K.A. v. M.S., 695 P.2d 785 (Colo. App. 1984).

The Colorado supreme court denied certiorari in the case annotated under this catchline in the 1986 replacement volume. See M.S. v. C.K.A., 705 P.2d 1391 (Colo. 1985).

As to time limitation under former statute, see Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963); Rios v. People in Interest of Martinez, 154 Colo. 88, 388 P.2d 402 (1964); In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Where a paternity suit has not been maintained by or on behalf of the child as required by this section and § 19-6-110, the trial court's dismissal of the action as barred by the former statute of limitations, which was in effect at the time of the child's birth, is proper. Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980).

Limitation periods. Since plaintiff was presumed to be the natural father under § 19-6-105 (1)(d), he is an interested party and may bring suit pursuant to subsection (2) at any time for the purpose of determining the existence of the father and child relationship and is not limited by the five-year period in subsection (1)(b). D.S.P. v. R.L.K., 677 P.2d 959 (Colo. App. 1983).

Limitation of former statute not applicable to support proceeding. Although a paternity proceeding was barred because not brought in time, an action could still be maintained under another statute for failure to support the illegitimate child. Wamsley v. People, 64 Colo. 521, 173 P. 425 (1918); Dikeou v. People, 95 Colo. 537, 38 P.2d 772 (1934).

Statute requires commencement of paternity proceedings within five years of birth of child despite mother's acknowledgment that ex-husband was not father of child born during marriage. People in Interest of S.L.H., 736 P.2d 1226 (Colo. App. 1986).

This section does not require that one man's presumed paternity by marriage be negated before an action to assert a parent and child legal relationship by another man, based upon a different presumption, may be commenced. People ex rel. Orange County v. M.A.S., 962 P.2d 339 (Colo. App. 1998).

The statute does not limit the time within which a presumed father may assert as a defense the nonexistence of the father and child relationship. Consequently, this case falls squarely within the general rule that a statute of limitations although barring the use of a claim for affirmative relief after the limitations period has run, is not a bar to asserting that claim as a defense. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989); People in Interest of L.J., 835 P.2d 1265 (Colo. App. 1992).

Although subsection (1)(a) states that an action for the purpose of declaring the existence of the father and child relationship presumed under § 19-4-105 (1)(a), (1)(b), or (1)(c) may be brought at any time, § 19-4-108 makes it clear that such an action initiated by the mother or father of a child or the "delegate child support enforcement agency" must be brought before the child's eighteenth birthday. If a child whose paternity has not been established initiates an action to declare the existence of the father and child relationship, the action may be brought at any time prior to the child's twenty-first birthday. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

It is clear from § 19-4-105 (1)(a) and subsection (1)(b) of this section that a man presumed to be a child's father by reason of his marriage to the child's mother at the time of conception is precluded from initiating an action to declare the nonexistence of the presumed father and child relationship after the child reaches the age of five. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Because of the public policy favoring legitimacy, the court did not abuse its discretion in continuing the parent and child relationship between a child and husband of child's mother as being in the best interest of the child in spite of genetic testing establishing a competing presumption in favor of another man. W.C. in Interest of A.M.K., 907 P.2d 719 (Colo. App. 1995).

An interpretation of subsection (1)(b) of this section that would deny the right of a presumptive father to defend against a child support action by asserting the nonexistence of a father and child relationship runs counter to principles of statutory construction and would produce results not consistent with the welfare of the affected children and the best interests of society. In a child support action under article 6 of this title, the defense of nonpaternity may be asserted by a man presumed to be the father pursuant to § 19-4-105 (1)(a) notwithstanding that the man would have been precluded by subsection (1)(b) from bringing an action under this article to declare the nonexistence of the father and child relationship because of the passage of time. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989); People in Interest of L.J., 835 P.2d 1265 (Colo. App. 1992).

This section does not allow an ex-husband to avoid five-year limitation on commencement of paternity proceedings as "an interested party". People in Interest of S.L.H., 736 P.2d 1226 (Colo. App. 1986).

Failure to name another man as possible father of child in petition filed pursuant to this section does not constitute grounds for dismissal. G.K.D. v. R.A.D., 759 P.2d 851 (Colo. App. 1988).

When a paternity issue is raised in conjunction with a determination of child support under the Uniform Dissolution of Marriage Act, the court must determine whether the party to be charged owes a duty of support according to the procedures of the U.P.A. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Mother not precluded from bringing a paternity action under this section after conclusion of an action under the Uniform Dissolution of Marriage Act (UDMA). Although the issue of paternity had been established in the UDMA action, the issue of whether the mother was entitled to birth-related costs was unresolved and could not have been resolved in prior action. In re G.E.R., 264 P.3d 637 (Colo. App. 2011).

Validity of determination of paternity. A trial court's determination of paternity in a dissolution of marriage action is invalid where, although requested to do so, it failed to follow any of the procedures outlined in the uniform act. In re Burkey, 689 P.2d 726 (Colo. App. 1984).

Applied in W.R.S. v. E.R., 41 Colo. App. 414, 588 P.2d 379 (1978); Figueroa v. Juvenile Court, 197 Colo. 510, 595 P.2d 223 (1979); Petition of G.D., 775 P.2d 90 (Colo. App. 1989); People v. Holleron, 797 P.2d 806 (Colo. App. 1990); M.R.D., by P.D. v. F.M., 805 P.2d 1200 (Colo. App. 1991); In re S.N.V., __ P.3d __ (Colo. App. 2011).

19-4-107.3. When determination of parentage is final - modifications - exceptions. (1) (a) An order determining parentage pursuant to this article shall be modified or set aside, within the time frames specified in subsection (2) of this section, if genetic test results based on DNA testing, administered in accordance with section 13-25-126, C.R.S., establish the exclusion of the individual named as the father in the order as the biological parent of the child and the court determines that it is just and proper under the circumstances and in the best interests of the child.

(b) If the court modifies or sets aside an order determining parentage pursuant to paragraph (a) of this subsection (1), then the court shall modify the provisions of the order respecting child support for installments accruing subsequent to the filing of the motion pursuant to section 14-10-122 (6), C.R.S., and may vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising from or based on the order determining parentage. The court shall not order restitution from the state for any sums paid to or collected by the state for the benefit of the child.

(2) (a) A motion to modify or set aside an order determining parentage pursuant to this section must be filed within two years from the date of the entry of the order.

(b) Repealed.

(3) Notwithstanding the provisions of subsection (1) of this section, neither a determination of parentage nor an order respecting child support shall be modified or set aside pursuant to this section if:

(a) The individual named in the order acknowledged paternity pursuant to section 19-4-105 (1) (c) or (1) (e) knowing that he was not the father of the child;

(b) The child was adopted by the individual named in the order; or

(c) The child was conceived by means of assisted reproduction.

(4) A motion filed pursuant to this section may be brought by the individual named as the father in the order and shall be served in the manner set forth in the Colorado rules of civil procedure upon all other parties. The court shall not modify or set aside a final order determining parentage pursuant to this section without a hearing.

(5) For purposes of this section, "DNA" means deoxyribonucleic acid.

Source: L. 2008: Entire section added, p. 1655, § 1, effective August 15.

Editor's note: Subsection (2)(b)(II) provided for the repeal of subsection (2)(b), effective July 1, 2011. (See L. 2008, p. 1655.)

19-4-107.5. Required notice of prior civil protection orders to prevent domestic abuse - determination of parent and child relationship. When filing a proceeding under this article, the filing party shall have a duty to disclose to the court the existence of any prior temporary or permanent civil protection orders to prevent domestic abuse issued pursuant to article 14 of title 13, C.R.S., and any emergency protection orders issued pursuant to section 13-14-103, C.R.S., entered against either party by any court within ninety days prior to the filing of the proceeding to determine the parent and child relationship. The disclosure required pursuant to this section shall address the subject matter of the previous protection orders, including the case number and jurisdiction issuing such orders.

Source: L. 95: Entire section added, p. 84, § 2, effective July 1. **L. 99:** Entire section amended, p. 503, § 14, effective July 1. **L. 2004:** Entire section amended, p. 556, § 14, effective July 1. **L. 2005:** Entire section amended, p. 766, § 30, effective June 1.

19-4-108. Statute of limitations. An action to determine the existence of the father and child relationship may be brought at any time prior to the child's eighteenth birthday by the mother or father of said child, by the child, or by the delegate child support enforcement agency. If, however, the statute of limitations in effect at the time of the child's birth was less than eighteen years, the delegate child support enforcement agency may bring an action on behalf of the said child at any time prior to the child's twenty-first birthday. An action brought by a child whose paternity has not been determined may be brought at any time prior to the child's twenty-first birthday. This section and section 19-4-107 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

Source: L. 87: Entire title R&RE, p. 795, § 1, effective October 1; entire section amended, p. 1587, § 59, effective October 1. **L. 88:** Entire section amended, p. 634, § 11, effective July 1. **L. 89:** Entire section amended, p. 794, § 19, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Prior to the repeal and reenactment of this title in 1987, the statute of limitations to determine a father and child relationship was contained in § 19-6-108. The statute of limitations as contained in that section was changed by L. 85, p. 596, § 18, to eighteen years. For the statute of limitations in effect prior to the change in 1985, see § 19-6-108 as contained in the 1978 Replacement Volume 8 and in annual supplements thereto prior to 1985.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Although § 19-4-107 (1)(a) states that an action for the purpose of declaring the existence of the father and child relationship presumed under § 19-4-105 (1)(a), (1)(b), or (1)(c) may be brought at any time, this section makes it clear that such an action initiated by the mother or father of a child or the "delegate child support enforcement agency" must be brought before the child's eighteenth birthday. If a child whose paternity has not been established initiates an action to declare the existence of the father and child relationship, the action may be brought at any time prior to the child's twenty-first birthday. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Extension of statute of limitations may create a remedy, but may not revive an existing cause of action. People v. Holleron, 797 P.2d 806 (Colo. App. 1990).

This section violates the equal protection clause of the fourteenth amendment of the U.S. Constitution in that it treated children with presumed fathers differently than children without presumed fathers. People in Interest of J.M.A., 803 P.2d 187 (Colo. 1990) (decided under law in effect prior to 1985 and subsequent amendments).

Period of limitation fixed when cause accrues. The period of limitation to be applied to plaintiff's action is initially determined by the statute effective when the cause accrued, and once the permissible time for commencing an action has expired and the bar created by the statute has attached, the rights and obligations of the parties are fixed. D.Z.M. v. D.A.G., 41 Colo. App. 377, 592 P.2d 1 (1978), aff'd, 199 Colo. 315, 607 P.2d 1004 (1980).

Section does not deny children whose parentage has not been established equal protection since the section bars actions brought by the mother or the state after three years but not actions by or on behalf of the child. People in Interest of T.L.H., 701 P.2d 87 (Colo. App. 1984).

19-4-109. Jurisdiction - venue. (1) Without limiting the jurisdiction of any other court, the juvenile court has jurisdiction of an action brought under this article. A delegate child support enforcement unit also has jurisdiction to establish paternity in noncontested paternities in accordance with the procedures specified in article 13.5 of title 26, C.R.S. The

action may be joined with an action in another court of competent jurisdiction for dissolution of marriage, legal separation, declaration of invalidity of marriage, or support.

(1.5) A paternity determination made by another state, whether established through voluntary acknowledgment, administrative processes, or judicial processes, shall be enforced and otherwise treated in the same manner as a judgment of this state.

(2) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this article with respect to a child who may have been conceived by that act of intercourse. Upon filing of the petition, the court shall issue a summons. The hearing shall be set for a day not less than ten days after service is completed or on such later date as the court may order. In addition to any other method provided by rule or statute, including rule 4(e) of the Colorado rules of civil procedure, when there is a basis for personal jurisdiction over an individual living outside this state pursuant to section 14-5-201, C.R.S., service may be accomplished by delivering a copy of the summons, together with a copy of the petition upon which it was issued, to the individual served. Such service may be by private process server or by sending such copies to such individual by certified mail with proof of actual receipt by such individual.

(3) The action may be brought in the county in which the child or the alleged father resides or is found, or in any county where public assistance was or is being paid on behalf of the child, or, if the father is deceased, in any county in which proceedings for probate of his estate have been or could be commenced.

Source: L. 87: Entire title R&RE, p. 795, § 1, effective October 1. **L. 89:** (1) amended, p. 1247, § 5, effective April 1; (3) amended, p. 794, § 20, effective July 1. **L. 94:** (1.5) added and (2) amended, p. 1541, § 14, effective May 31. **L. 2005:** (2) amended, p. 378, § 4, effective April 22.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

The district court has exclusive jurisdiction in certain matters concerning children, such as dissolutions of marriage or legal separation. Thus, the effect of subsection (1) is to provide an alternate forum for the resolution of paternity disputes. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Subsection (1) does not require that a parentage action be brought in the juvenile court before joinder with action in another court, and the district court had the authority to determine the issue of parentage once it was raised by the presumed father. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Personal service upon the father in Colorado enables the state to exercise personal jurisdiction over him, even if the child was not conceived by acts of sexual intercourse in the state of Colorado. People ex rel. J.A.E.S., 17 P.3d 199 (Colo. App. 2000).

Venue provision of subsection (3) prevails over any conflicting provisions in the Colorado rules of civil procedure. In re U.M. v. District Court, 631 P.2d 165 (Colo. 1981).

Applied in People in Interest of M.E.W.F., 42 Colo. App. 495, 600 P.2d 108 (1979).

19-4-110. Parties. The child may be made a party to the action. If the child is a minor, the court may appoint a guardian ad litem. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father under section 19-4-105, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. If a man who is alleged to be the natural father is deceased, the personal representative of his estate, if one has been appointed, shall be made a party. If a personal representative has not been appointed, the deceased man's spouse or an immediate blood relative shall be made a party. If a spouse or

immediate blood relative is not known or does not exist, the court shall appoint a representative for the alleged natural father who is deceased. The court may align the parties.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 93:** Entire section amended, p. 954, § 3, effective May 28. **L. 2006:** Entire section amended, p. 517, § 4, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

People had standing to bring action. Evidence showing that mother was receiving assistance from county department of public welfare for benefit of child was sufficient to allow the people to have standing to bring action to establish paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

For case holding that under former law child was not party to paternity action, see People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

The child is an indispensable party to a paternity proceeding. Unless the child can be made a party, the trial court is without jurisdiction to resolve any matters pertaining to the paternity suit. In re Burkey, 689 P.2d 726 (Colo. App. 1984).

Intervention by department of social services. Where the interest of the department of social services in a support obligation owed to a dependent child is contingent on the outcome of a paternity action, it was improper to allow it to intervene as a party to the action. However, such action was harmless since the department could have enforced its interest derived from the paternity proceeding in a separate proceeding following entry of the order determining paternity. J.E.S. v. F.F., 762 P.2d 703 (Colo. App. 1988).

A child must be made a party to a paternity action and must be represented individually by an appropriate fiduciary despite the language in the statute that the court may appoint a guardian ad litem. People in Interest of E.E.A. v. J.M., 854 P.2d 1346 (Colo. App. 1992); S.O.V. v. People in Interest of M.C., 914 P.2d 355 (Colo. 1996).

Guardian ad litem is not a true party to a paternity proceeding. To be a true party, a person must be competent to sue, have the right to control the proceedings, to defend, to present and cross-examine witnesses, and to appeal in his or her own right. In a paternity proceeding, a guardian ad litem is appointed for the sole purpose of representing the child's best interests and, although the child is a party, the guardian ad litem does not have the right to control the proceedings, to defend the action, or to appeal in his or her own right. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

While the trial court erred in determining its own subject matter jurisdiction, because the error in finding that the child did not have to be made a proper party could have been corrected on direct appeal, the doctrines of claim and issue preclusion bar any collateral attack on the trial court's original jurisdiction. People in Interest of E.E.A. v. J.M., 854 P.2d 1346 (Colo. App. 1992).

While the trial court erred in finding that the child did not have to be made a proper party, the error was based on a statute with inherently contradictory language and, therefore, the court did not manifestly abuse its authority in entertaining the action. People in Interest of E.E.A. v. J.M., 854 P.2d 1346 (Colo. App. 1992).

Absent special circumstances, once a determination of paternity has been made and permanent orders entered resolving custody, child support, and parenting time, the appointment of the guardian ad litem terminates. The Uniform Parentage Act is ambiguous as to the length of the guardian ad litem's appointment and there is no reason why the child and parents should suffer the expense and continued invasion of privacy caused by the indefinite appointment of a guardian ad litem, although the court may conclude that appointment of a guardian is necessary for a limited purpose or duration when issues are raised after the entry of permanent orders. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

The appointment of a guardian ad litem to represent a child's best interests in a paternity action continues during a direct appeal, initiated by one of the parties, from the per-

manent orders entered by the court in that action. In re S.R.H., 981 P.2d 199 (Colo. App. 1998), rev'd on other grounds sub nom. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000).

The 1993 amendment to this section was a change in procedural law and therefore applied to causes of action that existed on the effective date of the amendment. People ex rel. Orange Co. v. M.A.S., 962 P.2d 339 (Colo. App. 1998).

Applied in Jefferson Co. Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980).

19-4-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father-child relationship has been brought, an informal hearing shall be held if it is determined by the court to be in the child's best interest. The court may order that the hearing be held before a magistrate. The public shall be barred from the hearing if it is determined by the court to be in the best interest of any of the parties. A record of the proceeding or any portion thereof shall be kept if any party requests or the court orders. Rules of evidence need not be observed. At the informal hearing, the judge or magistrate shall give a verbal advisement to the parties that a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S. The judge or magistrate shall further advise the parties that, if genetic tests are not obtained prior to the legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

(2) Upon the refusal of any witness, including a party, to testify under oath or produce evidence, the court may order such witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that such witness' testimony or evidence might tend to incriminate such witness, the court may grant such witness immunity from the use of the testimony or evidence the witness is required to produce to prove the commission of a criminal offense by the witness. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(4) Upon the filing of a petition under this article, any party may seek the issuance of a temporary protection order or injunction under the criteria set forth in section 14-10-108, C.R.S. Any party may further seek temporary orders as to the allocation of parental responsibilities, including allocation of decision-making responsibility and parenting time, and support once an order determining the existence of the parent and child relationship has been entered by the court. The filing of a motion for temporary orders shall not prevent a party or public agency from seeking other relief as may be provided by this article. Issues of temporary orders concerning the allocation of parental responsibilities, including decision-making responsibility and parenting time, and issues of support shall be determined in accordance with the criteria set forth in the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S. Any temporary protection order issued pursuant to this subsection (4) shall be on a standardized form prescribed by the judicial department, and a copy shall be provided to the protected person.

(5) At the time a protection order is requested pursuant to this section, the court shall inquire about, and the requesting party and such party's attorney shall have an independent duty to disclose, knowledge such party and such party's attorney may have concerning the existence of any prior protection orders of any court addressing in whole or in part the subject matter of the requested protection order.

(6) The duties of peace officers enforcing orders issued pursuant to this section shall be in accordance with section 18-6-803.5, C.R.S., and any rules adopted by the Colorado supreme court pursuant to said section.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 91:** (1) amended, p. 363, § 35, effective April 9. **L. 93:** (2) amended, p. 1737, § 30, effective July 1. **L. 94:** (4) to (6) added, p. 2016, § 11, effective January 1, 1995. **L. 98:** (4) amended, p. 1409, § 70, effective February 1, 1999. **L. 2003:** (4) and (5) amended, p.1016, § 26, effective July 1. **L. 2005:** (1) amended, p. 378, § 5, effective January 1, 2006.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-112. Genetic or other tests. Upon motion of the court or any of the interested parties, genetic tests or other tests of inherited characteristics shall be ordered and the results received in evidence, as provided in section 13-25-126, C.R.S. Upon agreement of the mother and the presumed or alleged father or fathers, genetic tests or other tests of inherited characteristics may be administered prior to filing of an action. If the action is then filed, the test results shall be admitted into evidence as provided in section 13-25-126, C.R.S.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 11, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R.McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Requirement of blood tests. On motion of the alleged father, the trial of the issue of paternity of the unborn child shall not be held until after blood grouping tests are available. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969) (decided under former § 19-6-104 prior to the 1977 repeal and reenactment of this article).

This section does not provide for genetic testing during paternity adjudications after a legal judgment of paternity has entered. People ex rel. J.A.U. v. R.L.C., 47 P.3d 327 (Colo. 2002).

Evidence from tests sufficient for summary judgment. K.H.R. By and Through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

19-4-113. Evidence relating to paternity. (1) Evidence relating to paternity may include:

(a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(c) Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(e) All other evidence relevant to the issue of paternity of the child.

(2) In any action brought pursuant to article 13 or 13.5 of title 26, C.R.S., the parties shall be required to use the laboratory designated by the delegate child support enforcement unit for genetic tests or other tests of inherited characteristics. Any subsequent test or other tests shall be determined by the court as provided in section 13-25-126, C.R.S.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 92:** (2) added, p. 183, § 1, effective August 1. **L. 97:** (1)(c) amended, p. 562, § 9, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Common-law rule of testimony of parties. The common-law rule prohibiting a husband or wife from testifying to nonaccess in filiation cases first arose in the middle of the 18th century. Colorado adopted the common law of England as it existed prior to the announcement of that rule. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

There is a presumption of legitimacy of children born to a married woman. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

Such presumption may be overcome by evidence of nonaccess of the husband during the period when conception occurred, and it is error to reject such evidence in an action to establish paternity of a child. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

Burden of proof. If the presumption of legitimacy of children born to a married woman is overcome, it would still be incumbent on a petitioner to establish to the satisfaction of a trial court that a respondent was the father of a child, but he cannot rely on the outmoded and archaic conclusiveness of a presumption in the light of facts which a petitioner offers to prove. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

Preponderance of proof required. The trial court's instruction to the effect that petitioner must prove paternity by a preponderance of the evidence, rather than by clear and convincing evidence, correctly stated the law. McCoy v. People in Interest of Minor Child, 165 Colo. 407, 439 P.2d 347 (1968).

Prima facie case established. In a proceeding to determine paternity of a child, a petitioner's testimony of acts of intercourse with respondent and her pregnancy following and birth of the child within the permissible period is sufficient to establish a prima facie case and require submission of the issues to a jury. Medina v. Gonzales, 141 Colo. 118, 347 P.2d 138 (1959).

Evidence of specific resemblance is probative of paternity and should be admitted, but only when presented by a qualified expert witness who relates to the jury those characteristics which bear on paternity. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

Scientific foundation for evidence of specific resemblance. Unlike evidence of general resemblance, there is a firm scientific foundation for inferring parentage from the existence of evidence of specific resemblance. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

This section is sufficiently broad to order the husband, who was the presumed father, to submit to blood tests. People in Interest of M.P.R., 723 P.2d 743 (Colo. App. 1986).

Human leukocyte antigen test admissible on issue of paternity because it is capable of establishing either that an individual could not be the father of a certain child or that the probability that he is the father exceeds ninety percent. E.M.F. v. N.N., 717 P.2d 961 (Colo. App. 1985).

Exhibition of child is discretionary. In a paternity action, the question of whether the child is to be exhibited before the trier of fact is a discretionary matter on the part of the trial court, and its determination will be upheld on review in the absence of an abuse of that discretion. In re People in Interest of R.D.S., 32 Colo. App. 26, 507 P.2d 481, aff'd, 183 Colo. 89, 514 P.2d 772 (1973).

Refusal to allow such exhibition upheld. Where the court ruled in a paternity action that exhibition of the child would have been of no probative value, and appellant made no offer of proof and advanced no argument that could have been a basis for the reviewing court to determine that the trial court was in error, and where the existence of the child was not in dispute, and ample evidence was presented to support a verdict for or against either party, there was no abuse of discretion in the court's ruling. In re People in Interest of R.D.S., 32 Colo. App. 26, 507 P.2d 481, aff'd, 183 Colo. 89, 514 P.2d 772 (1973).

Exhibition of child for purpose of showing general resemblance denies right to cross-examination. Exhibition of a child to the jury in a paternity action for the purpose of showing general resemblance without expert testimony effectively denies the respondent the right of cross-examination, because the mere exhibition of a child without comment leaves a jury with the uncontroverted inference of similarities between such child and the alleged father. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

And is of questionable probative value and irrelevant. Because the probative force of evidence of general resemblance is questionable, yet gives rise to the conflicting interest of undue jury sympathy, prejudice, and confusion, exhibition of a child to jury, when offered to show paternity by way of general resemblance is irrelevant as a matter of law. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

No statutory basis for guardian ad litem obtaining genetic testing in a paternity proceeding at the expense of the department of social services or a county to provide a basis for diagnosing future problems that a minor child may encounter in later years. Figueroa v. Juvenile Court, 197 Colo. 510, 595 P.2d 223 (1979).

19-4-114. Pretrial recommendations - temporary orders. (1) On the basis of the information produced at the pretrial hearing, the judge or magistrate conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice;

(b) That the matter be compromised by an agreement among the alleged father, the mother, and the child in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or magistrate conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or magistrate conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in section 19-4-116 (6), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

(c) That the alleged father voluntarily acknowledge his paternity of the child;

(d) That the action be consolidated with a relinquishment action filed pursuant to part 1 of article 5 of this title.

(2) If the parties accept a recommendation made in accordance with subsection (1) of this section, judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) of this section and genetic tests have not been taken, the court shall require the parties to submit to genetic tests, if practicable. Thereafter, the judge or magistrate shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial. If the evidence relating to paternity meets the requirements set forth in section 13-25-126 (1) (g), C.R.S., the court shall issue temporary orders establishing current child support, foster care maintenance, and medical support to remain in effect pending a final disposition of the proceeding.

(4) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(5) The informal hearing may be terminated and the action set for trial if the judge or magistrate conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3) of this section.

Source: L. 87: Entire title R&RE, p. 797, § 1, effective October 1. **L. 91:** (1), (3), and (5) amended, p. 363, § 36, effective April 9. **L. 93:** (1)(b) amended, p. 1780, § 43, effective June 6. **L. 97:** (3) amended, p. 562, § 10, effective July 1; (3) amended, p. 1275, § 14, effective July 1. **L. 2003:** (3) amended, p. 1270, § 61, effective July 1. **L. 2005:** (1)(d) added, p. 102, § 4, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments made to subsection (3) by House Bill 97-1205 and Senate Bill 97-114 were harmonized.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (3), see section 1 of chapter 236, Session Laws of Colorado 1997.

19-4-115. Civil action. An action under this article is a civil action governed by the Colorado rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 19-4-111 (2) and (3), 19-4-112, and 19-4-113 apply.

Source: L. 87: Entire title R&RE, p. 798, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 12, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in In re U.M. v. District Court, 631 P.2d 165 (Colo. 1981).

19-4-116. Judgment or order - birth-related costs - evidence. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate or if the court enters a judgment or order determining the existence of a parent and child relationship during the course of a proceeding held pursuant to article 3 of this title, the court shall order that a new birth certificate be issued under section 19-4-124.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the recovery of child support debt pursuant to section 14-14-104, C.R.S., the allocation of parental responsibilities with respect to the child and guardianship of the child, parenting time privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay for genetic testing and to pay the reasonable expenses of the mother's pregnancy and confinement.

(b) Repealed.

(c) Bills for pregnancy, childbirth expenses, and genetic testing are admissible as evidence without the necessity of third-party foundation testimony and shall constitute prima facie evidence of the amounts incurred for such services or for expenses incurred on behalf of the child.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court or delegate child support enforcement unit may enter an order directing the father to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period which occurred prior to the entry of the order establishing paternity. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) The judgment or order may include a provision requiring that the respondent initiate inclusion of the child under a medical insurance policy currently in effect for the benefit of the respondent, purchase medical insurance for the child, or in some other manner provide for the current or future medical needs of the child. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and copayments. If the judgment or order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses, that fact may be grounds for a modification of the order under section 14-10-122, C.R.S.

(6) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) The needs of the child;

(b) The standard of living and circumstances of the parents;

(c) The relative financial means of the parents;

(d) The earning ability of the parents;

(e) The need and capacity of the child for education, including higher education;
(f) The age of the child;
(g) The financial resources and the earning ability of the child;
(h) The responsibility of the parents for the support of others;
(i) The value of services contributed by the parent with whom the child resides the majority of the time;
(j) The standard of living the child would have enjoyed had the parents been married; and
(k) The child support guidelines, as set forth in section 14-10-115, C.R.S.

(7) Any order of support made pursuant to subsections (4) to (6) of this section shall continue until the child is nineteen years of age, unless the support order is terminated sooner by court order.

(8) The court may order support to be continued after the child is nineteen years of age if the child is unable to care for himself or herself by reason of mental or physical disability or other reason justifiable in the opinion of the court.

(9) All child support orders entered pursuant to this article shall include the names and dates of birth of the parties and of the children who are the subject of the order and the parties' residential and mailing addresses. The social security numbers of the parties and children shall be collected pursuant to sections 14-14-113 and 26-13-127, C.R.S.

Source: L. 87: Entire title R&RE, p. 798, § 1, effective October 1; (6)(i) and (6)(j) amended and (6)(k) added, p. 1587, § 60, effective October 1. **L. 89:** (3), (5), and (7) amended, p. 794, § 21, effective July 1. **L. 93:** (3) amended, p. 582, § 21, effective July 1; (8) amended, p. 1638, § 25, effective July 1. **L. 94:** (4), (7), and (8) amended, p. 1542, § 15, effective May 31. **L. 95:** (3) amended, p. 1397, § 2, effective July 1. **L. 97:** (3)(a) amended and (3)(c) and (9) added, p. 1276, §§ 15, 16, effective July 1. **L. 98:** (3)(a) and (6)(i) amended, p. 1409, § 71, effective February 1, 1999. **L. 99:** (2) and (9) amended, p. 1086, § 5, effective July 1. **L. 2008:** (9) amended, p. 1348, § 4 effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective June 30, 1999. (See L. 95, p. 1397.)

Cross references: For the legislative declaration contained in the 1993 act amending subsection (3), see section 1 of chapter 165, Session Laws of Colorado 1993; for the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For comment, "The Unwed Father's Parental Rights and Obligations After S.P.B.: A Retreat in Constitutional Protection" see 60 Den. L.J. 659 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Constitutionality. This section does not violate due process in creating an irrebuttable presumption that a father should share in the duty of child support. People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

There is no violation of equal protection in the statutory obligation of both parents to pay child support or in the denial to an unwed father of the right to demand the termination of a pregnancy. People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

Former section constitutional. Former section compelling a father to support unborn child and its mother was constitutional. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953).

Former statute which provided for assessment of damages held unconstitutional and would not support a judgment of damages. This did not relieve the father of an illegitimate child of his obligation to support the child since the finding of the jury as to the father of the child involved stood. Loveland v. Lewis, 169 Colo. 149, 454 P.2d 84 (1969).

Law liberally interpreted. Where the paternity of the child is established beyond question, the law should be liberally construed to insure the necessary help to the child and its mother, consonant with the father's ability to pay. Davis v. People, 103 Colo. 437, 86 P.2d 975 (1939).

The primary issue for determination in a paternity case is whether the alleged father is, in fact, the father. A.R.B. v. G.L.P., 180 Colo. 439, 507 P.2d 468 (1973).

Determination of status of child is conclusive. A proceeding to determine the parentage of a child is in the direct interest of the child and the status of the child as to its parentage determined in such a proceeding is just as conclusive and binding upon the child as it would be upon a parent brought into court under the provisions of the statute. In re Morrow's Estate, 100 Colo. 424, 68 P.2d 36 (1937).

A person who is determined to be a nonparent under the Uniform Parentage Act but who fits the criteria in § 14-10-123 (1) may qualify as an "appropriate party" within the meaning of this section. In re Ohr, 97 P.3d 354 (Colo. App. 2004).

Payment of reasonable expenses of mother's pregnancy and confinement is authorized and jurisdiction rests exclusively under the "Uniform Parentage Act" and not under the "Uniform Dissolution of Marriage Act". In re Custody of Garcia, 695 P.2d 774 (Colo. App. 1984).

Question of child support involved. In a paternity proceeding the question of support of the child, both past and future, is involved. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

A father may be required to pay child support retroactive to the birth of the child pursuant to subsection (4). In re Smith, 7 P.3d 1012 (Colo. App. 1999).

Subsection (4) permits an award of child support retroactive to the date of the child's birth and does not violate equal protection by treating unmarried parents differently from married parents. People ex rel. B.W., 17 P.3d 199 (Colo. App. 2000).

Jurisdiction to award back child support. The use of the word "may" in the first sentence of subsection (3) indicates that the general assembly intended to allow the trial court broad discretion in determining support issues, including that of child support arrearages. People in Interest of L.W., 756 P.2d 392 (Colo. App. 1988) (decided under former § 19-6-116 as it existed prior to the 1987 repeal and reenactment of this title).

Juvenile court properly considered the father's earning ability and the parties' agreement to sell jointly owned house in determining whether an increase in child support was warranted for child born out of wedlock and the juvenile court did not abuse its discretion in ordering increased child support upon the sale of said house. M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

Unless an order specifically states that it is not subject to modification a trial court may modify a lump-sum child support order. M.F. v. L.M., 780 P.2d 69 (Colo. App. 1989).

Request to hear change of minor's name within broad grant of authority to trial court pursuant to subsection (3). Whether change of name is in the best interests of a minor child is a factual determination for the trial court. D.K.W. v. J.L.B., 807 P.2d 1222 (Colo. App. 1990); S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Trial court may deviate from presumed amount of support in § 14-10-115 according to the criteria in subsection (6) of this section so long as it enters findings that allow an appellate court and the parties to discern the reasons for the deviation. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Power of court to issue temporary orders. The juvenile court may, in its discretion in a proper case, issue temporary orders providing for protection, support, or medical and surgical treatment as it deems in the best interest of the child prior to adjudication or disposition of the petition to determine paternity. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

Evidence as to the putative father's ability to pay must not only be adduced but the ability of the man charged to pay must bear some relationship to the sum awarded. Noffsinger v. Sipes, 161 Colo. 413, 422 P.2d 639 (1967).

Continuing jurisdiction of the trial court under this section allows appointment of a guardian ad litem even after the entry of permanent orders when deemed necessary by the court. Such appointment may be made on motion of a party or on the court's own motion; however, appointment of a guardian ad litem after the entry of permanent orders should not be done as a matter of course. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994); S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

In paternity proceedings, juvenile court must make and modify permanent orders regarding parenting time in accordance with the Uniform Dissolution of Marriage Act, § 14-10-101 et seq. People in Interest of S.E.G., 934 P.2d 920 (Colo. App. 1997).

Parenting time is primarily a right of the child and only secondarily a right of the parent. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Relevant factors that the court appropriately considered under subsection (3)(a) included the facts that the mother was rigid and inflexible, the father harbored anger and hostility, and visitation occurred in an atmosphere of tension and distrust. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

A specific order, containing limitations on father's parenting time, was appropriate where the evidence showed a lack of cooperation between the parties. Under such circum-

stances, a general order does not meet the purposes for which parenting time is intended. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Not all medical expenses allocated. To harmonize this section and § 19-4-129, only uninsured medical expenses exceeding $100 for enumerated health problems may be apportioned between the parties in a paternity action filed on or after July 1, 1988. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Cost of a nanny may be included in the calculation of child support. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Mother not precluded from bringing a paternity action under this section after conclusion of an action under the Uniform Dissolution of Marriage Act (UDMA). Although the issue of paternity had been established in the UDMA action, the issue of whether the mother was entitled to birth-related costs was unresolved and could not have been resolved in prior action. In re G.E.R., 264 P.3d 637 (Colo. App. 2011).

19-4-117. Costs. The court shall order reasonable fees of counsel, experts, and the child's guardian ad litem and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. In any action brought pursuant to article 13 or 13.5 of title 26, C.R.S., the final costs of any genetic tests or other tests of inherited characteristics shall be assessed against the nonprevailing party on the parentage issue.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 92:** Entire section amended, p. 183, § 2, effective August 1. **L. 97:** Entire section amended, p. 563, § 11, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section and § 13-25-126 are inconsistent on the question of who bears the cost of additional blood tests in paternity actions, but § 13-25-126 controls. L.D.G. v. E.R., 723 P.2d 746 (Colo. App. 1986).

Attorney fees. This section does not predicate an award of attorney fees and costs upon a showing of bad faith. In re C.R.A.H., 647 P.2d 239 (Colo. App. 1981).

Expert witness fees. Expert witnesses are entitled to fees for the time actually spent in the courtroom. In re C.R.A.H., 647 P.2d 239 (Colo. App. 1981).

Mileage fees for out-of-state witnesses. Out-of-state witnesses not under subpoena are not entitled to a mileage fee. In re C.R.A.H., 647 P.2d 239 (Colo. App. 1982).

Determination as to payment of guardian ad litem fees is within discretion of the juvenile court, and its decision will not be disturbed on appeal absent a clear abuse of that discretion. G.K.D. v. R.A.D., 759 P.2d 851 (Colo. App. 1988).

Section dictates that the trial court assess the costs of the genetic tests against the nonprevailing parties, here the mother and the county department of social services, even though there was a presumption of paternity based on the father's acknowledgment of paternity on the birth certificate. People ex rel. L.J.P., 2 P.3d 140 (Colo. App. 2000).

Applied in In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

19-4-118. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this article or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(2) The court may order support payments to be made to the obligee, the clerk of the court, in those cases in which the executive director of the department of human services

has notified the state court administrator pursuant to section 26-13-114 (5), C.R.S., that the judicial district in which the court is situated is ready to participate in the family support registry, through the family support registry, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court. The court may not order payments to be made to the clerk of the court once payments may be made through the family support registry.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(4) In making any order for support pursuant to this section, the court shall take into consideration the capability of both parents to provide support.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 98:** (2) amended, p. 766, § 16, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-118 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in Deeb v. Morris, 14 B.R. 217 (D. Colo. 1981).

19-4-119. Modification of judgment or order. (1) The court has continuing jurisdiction to modify or revoke a judgment or order:

(a) For future education and support; and

(b) With respect to matters listed in sections 19-4-116 (3) and (4) and 19-4-118 (2); except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 19-4-116 (4) may specify that the judgment or order may not be modified or revoked.

(2) The court may modify an order of support only in accordance with the provisions of and the standard for modification in section 14-10-122, C.R.S.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 90:** (2) added, p. 892, § 16, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-119 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Unless an order specifically states that it is not subject to modification, a trial court may modify a lump-sum child support order. M.F. v L.M., 780 P.2d 69 (Colo. App. 1989) (decided under former § 19-6-119 as it existed prior to the 1987 repeal and reenactment of this title).

Continuing jurisdiction of the trial court under this section allows appointment of a guardian ad litem even after the entry of permanent orders when deemed necessary by the court. Such appointment may be made on motion of a party or on the court's own motion; however, appointment of a guardian ad litem after the entry of permanent orders should not be done as a matter of course. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

In paternity proceedings, juvenile court must make and modify permanent orders regarding parenting time in accordance with the Uniform Dissolution of Marriage Act, § 14-10-101 et seq. People in Interest of S.E.G., 934 P.2d 920 (Colo. App. 1997).

19-4-120. Represented by counsel. At the pretrial hearing and in further proceedings, any party may be represented by counsel.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-120 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-121. Hearings and records - confidentiality. (Repealed)

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-4-122. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this article applicable to the father and child relationship apply.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-122 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in In re S.N.V., __ P.3d __ (Colo. App. 2011).

19-4-123. Promise to render support. (1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to section 19-4-107 (4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-123 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-124. Birth records. (1) Upon order of a court of this state or upon an order issued and filed pursuant to article 13.5 of title 26, C.R.S., or upon request of a court of another state, the state registrar of vital statistics shall prepare a new certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate, but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons or, in exceptional cases only, upon an order of the court for good cause shown.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1. **L. 89:** (1) amended, p. 1247, § 6, effective April 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-124 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-125. "Father" defined. In case of a maternity suit against a purported mother, where appropriate in the context, the word "father" shall mean "mother".

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-127 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in In re S.N.V., __ P.3d __ (Colo. App. 2011).

19-4-126. Uniformity of application and construction. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-128 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-127. Severability. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and, to this end, the provisions of this article are severable.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-129 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980).

19-4-128. Right to trial to court. Any party may demand a trial to the court to determine the existence or nonexistence of the parent and child relationship. No party may demand a jury trial, and notwithstanding any demand which may have been made, trial shall be to the court and not to a jury.

Source: L. 88: Entire section added, p. 746, § 15, effective July 1. **L. 92:** Entire section amended, p. 183, § 3, effective August 1. **L. 94:** Entire section amended, p. 1542, § 16, effective May 31. **L. 97:** Entire section amended, p. 1276, § 17, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

19-4-129. Child support - guidelines - schedule of basic support obligations. The provisions of section 14-10-115, C.R.S., shall apply to all child support obligations, established or modified, as part of any proceeding under this article, whether filed on or subsequent to July 1, 1988.

Source: L. 88: Entire section added, p. 746, § 15, effective July 1.

ANNOTATION

Trial court may deviate from presumed amount of support in § 14-10-115 according to the criteria listed in § 19-4-116 (6) so long as it enters findings that allow an appellate court and the parties to discern the reasons for the deviation. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Court must allocate dependency exemption between the parties based on their respective gross incomes pursuant to § 14-10-115. Federal tax law contemplates such an allocation, and does not preempt it. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Not all medical expenses allocated. To harmonize this section and § 19-4-116, only uninsured medical expenses exceeding $100 for enumerated health problems may be apportioned between the parties in a paternity action filed on or after July 1, 1988. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

19-4-130. Temporary orders. (1) Upon the filing of any proceeding under this article or under article 13.5 of title 26, C.R.S., the court shall, as soon as practicable, enter a temporary or permanent order allocating parental responsibilities that shall allocate the decision-making responsibility and parenting time of the child until further order of the court.

(2) Subsection (1) of this section shall not apply to any paternity determination made pursuant to section 14-5-701, C.R.S.

Source: L. 92: Entire section added, p. 184, § 4, effective August 1. **L. 96:** Entire section amended, p. 612, § 14, effective July 1. **L. 98:** (1) amended, p. 1410, § 72, effective February 1, 1999.

ARTICLE 5

Relinquishment and Adoption

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Law reviews: For article, "Difficult Issues in Adoption - Part 1", see 24 Colo. Law. 851 (1994); for article, "Difficult Issues in Adoption - Part 2", see 24 Colo. Law. 1083 (1994); for casenote, "Inappropriate Application of the Best Interests of the Child Standard Leads to Worst Case Scenario: In re C.C.R.S.", see 68 U. Colo. L. Rev. 259 (1997).

PART 1

RELINQUISHMENT

19-5-100.2. Legislative declaration.
19-5-100.5. Applicability of article.
19-5-101. Termination of the parent-child legal relationship.
19-5-102. Venue.
19-5-102.5. Relinquishment hearings - court docket priority.
19-5-103. Relinquishment procedure - petition - hearings.
19-5-103.5. Expedited relinquishment procedure - children under one year of age - other birth parents - notice - termination.
19-5-103.7. Anticipated expedited relinquishment - children under one year of age - notice to other or possible parent - administrative procedures.
19-5-104. Final order of relinquishment.
19-5-105. Proceeding to terminate parent-child legal relationship.
19-5-106. Records. (Repealed)
19-5-107. When notice of relinquishment proceedings required. (Repealed)
19-5-108. When notice of relinquishment proceedings required.

PART 2

ADOPTION

19-5-200.2. Legislative declaration.
19-5-201. Who may be adopted.
19-5-202. Who may adopt.
19-5-202.5. Adoption hearings - termination appeals - court docket priority - exceptions.
19-5-203. Availability for adoption.
19-5-204. Venue.
19-5-205. Adoption decree of foreign country approved.
19-5-205.5. Nonpublic agency interstate and foreign adoptions - legislative declaration - authority for department to select agencies.
19-5-206. Placement for purposes of adoption.
19-5-207. Written consent and home study report for public adoptions - criminal history records check - investigation.
19-5-207.3. Placement of sibling groups.
19-5-207.5. Legislative declaration - standardized home studies - adoptive family resource registry - rules.
19-5-208. Petition for adoption.
19-5-209. Petition - written home study reports.
19-5-210. Hearing on petition.
19-5-211. Legal effects of final decree.
19-5-212. Copies of order of adoption - to whom given.
19-5-213. Compensation for placing child prohibited.
19-5-214. Limitation on annulment of adoption - best interests standard.
19-5-215. Records. (Repealed)
19-5-216. Increased access for adoption - study.

PART 3

ACCESS TO ADOPTION INFORMATION

19-5-301. Legislative declaration.
19-5-302. Definitions. (Repealed)
19-5-303. Commission created - duties.
19-5-304. Confidential intermediaries - confidential intermediary services.
19-5-305. Access to adoption records - contact with parties to adoption - contact preference form and updated medical history statement.
19-5-306. Public information campaign.
19-5-307. Child placement agency - transfer of records.

PART 4

ACCESS TO NONIDENTIFYING ADOPTION INFORMATION

19-5-401. Definitions. (Repealed)
19-5-402. Access to nonidentifying information.
19-5-403. Authority for department to select agencies.

PART 1

RELINQUISHMENT

19-5-100.2. Legislative declaration. (1) The general assembly hereby finds that parental relinquishment and adoption of children are important and necessary options to facilitate the permanent placement of minor children if the birth parents are unable or unwilling to provide proper parental care. The general assembly further finds that adoption offers significant psychological, legal, economic, and social benefits not only for children who might otherwise be homeless but also for parents who are unable to care for their children and for adoptive parents who desire children to nurture, care for, and support. Conversely, the general assembly recognizes that disrupted adoptive placements often have a profound and negative impact on individuals, particularly children, involved in the adoption proceedings.

(2) It is the purpose of this article to promote the integrity and finality of adoptions to ensure that children placed in adoptive placements will be raised in stable, loving, and permanent families. The general assembly intends that by enacting this legislation, it will be protecting children from being uprooted from adoptive placements and from the life-long emotional and psychological trauma that often accompanies being indiscriminately moved.

Source: L. 94: Entire section added, p. 746, § 1, effective April 20.

19-5-100.5. Applicability of article. Except where indicated otherwise, each provision of this article pertaining to relinquishment or adoption shall apply only to child welfare adoptions and not to private adoptions.

Source: L. 2010: Entire section added, (HB 10-1106), ch. 278, p. 1273, § 4, effective May 26.

19-5-101. Termination of the parent-child legal relationship. (1) The juvenile court may, upon petition, terminate the parent-child legal relationship between a parent or parents, or a possible parent or parents, and a child in:

(a) Proceedings under section 19-1-104 (1) (d);

(a.5) Proceedings under section 19-5-103.5 (2) (d);

(b) Proceedings under section 19-5-105; or

(c) Proceedings under section 19-5-203 (1) (d), (1) (e), (1) (f), (1) (j), and (1) (k).

(2) No parent shall relinquish the parent-child legal relationship with a child other than in accordance with the provisions of this article.

(3) A termination by a court of a parent-child legal relationship pursuant to proceedings under this section or any section described by subsection (1) of this section shall not be deemed to terminate a sibling relationship between sibling children who are parties to the termination of the parent-child legal relationship.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 99:** (1) amended, p. 1065, § 9, effective June 1. **L. 2007:** (1) amended, p. 113, § 1, effective July 1. **L. 2008:** (3) added, p. 2, § 2, effective August 5.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "A Lawyer's Advice to the Unmarried Mother", see 31 Dicta 112 (1954). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Paternal rights (now parent-child legal relationships) may be forfeited by abandonment of the child. Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954).

Statutory relinquishment cannot be waived because it is a part of the court process in such matters. It is necessary in order that the parent be under the jurisdiction of the court where the other statutory provision of counseling and guidance can be given. Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

An attempt to relinquish a minor child to an individual is without any force or effect. Consent alone adds nothing in the way of giving jurisdiction to the court. Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

19-5-102. Venue. A petition for relinquishment of the parent-child relationship shall be filed in the county where the child resides or in the county where the petitioner resides. If a child placement agency is involved, the petition may be filed in the county where the child placement agency is located.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 88:** Entire section R&RE, p. 746, § 16, effective July 1. **L. 89:** Entire section amended, p. 938, § 1, effective March 21.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-102.5. Relinquishment hearings - court docket priority. (1) On and after July 1, 2002, any hearing concerning a petition for relinquishment filed in a district court, the Colorado court of appeals, or the Colorado supreme court shall be given a priority on the court's docket. On and after July 1, 2002, if there is no determination on a case concerning a petition for relinquishment by any such court within two months of the filing of the petition, it shall be given a priority on the court's docket that supersedes the priority of any other priority civil hearing on the court's docket.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall affect the priority of a hearing concerning the issuance of a temporary protection order pursuant to section 13-14-102, C.R.S.

(3) The provisions of this section shall be implemented within existing appropriations.

Source: L. 2002: Entire section added, p. 1644, § 2, effective July 1. **L. 2003:** (2) amended, p. 1016, § 27, effective July 1. **L. 2004:** (2) amended, p. 556, § 15, effective July 1.

19-5-103. Relinquishment procedure - petition - hearings. (1) Any parent desiring to relinquish his or her child shall:

(a) Obtain counseling for himself or herself and the child to be relinquished as the court deems appropriate from the county department of social services in the county where such parent resides or from a licensed child placement agency, and, if the petitioner has not received the counseling required by the court, the petition shall be continued until counseling is obtained, and the petitioner shall be referred to counseling by the court;

(b) (I) Petition the juvenile court upon a standardized form prescribed by the judicial department giving the following information: The name of both natural parents, if known; the name of the child, if named; the ages of all parties concerned; and the reasons for which relinquishment is desired.

(II) The petition shall be accompanied by a standardized affidavit of relinquishment counseling prescribed by the judicial department that includes:

(A) A statement indicating the nature and extent of counseling furnished to the petitioner, if any, and the recommendations of the counselor;

(B) A copy of the original birth certificate or a copy of the application therefor; and

(C) A statement disclosing any and all payments, gifts, assistance, goods, or services received, promised, or offered to the relinquishing parent in connection with the pregnancy, birth, or proposed relinquishment of the child and the source or sources of such payments, gifts, assistance, goods, or services.

(1.5) (a) Pursuant to the provisions of section 19-1-126, the petition for relinquishment shall:

(I) Include a statement indicating whether the child is an Indian child; and

(II) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts shall be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in section 19-1-126 (1) (c).

(2) The counseling specified in paragraph (a) of subsection (1) of this section and provided by the department or the child placement agency shall include, but not be limited to, the following:

(a) Information to the relinquishing parent concerning the permanence of the decision and the impact of such decision on the relinquishing parent now and in the future;

(b) Information concerning each parent's complete medical and social histories;

(c) In the case of pregnancy, referral of the woman for medical care and for determination of eligibility for medical assistance;

(d) Information concerning alternatives to relinquishment and referral to private and public resources that may meet the parent's needs;

(e) Relinquishment services necessary to protect the interests and welfare of a child born in a state institution;

(f) Information to the child's parent that if he or she applies for public assistance for himself or herself and the child, he or she must cooperate with the child support enforcement unit for the establishment and enforcement of a child support order; and

(g) The confidentiality of all information, except for nonidentifying information as defined in section 19-1-103 (80) that may be accessed as provided in part 4 of this article, obtained by the department and the child placement agency in the course of relinquishment counseling unless the parent provides written permission or a release of information is ordered by a court of competent jurisdiction and except for a copy of an original birth certificate that may be obtained by an adult adoptee, adult descendant of an adoptee, or a legal representative of the adoptee or descendant as authorized by section 19-5-305. The counseling shall also include notice that a birth parent has the opportunity to file a written statement specifying that the birth parent's information remain confidential, an explanation of the rights and responsibilities of birth parents who disagree about consent as set forth in section 19-5-305 (2), and notice that a birth parent has the opportunity to sign and submit a contact preference form and updated medical history statements to the state registrar as set forth in section 19-5-305 (1.5).

(2.5) In those cases in which a parent proposes to relinquish his or her parent-child legal relationship with respect to a child who is under one year of age pursuant to the expedited procedures set forth in section 19-5-103.5, the licensed child placement agency or the county department of social services assisting the relinquishing parent shall proceed with filing the petition and providing notice as set forth in section 19-5-103.5.

(3) Upon receipt of the petition for relinquishment, the court shall set the same for hearing on the condition that the requirements of subsection (1) of this section have been complied with by the petitioner.

(4) (a) Except as otherwise provided in section 19-5-103.5 (2) (d), the parent-child legal relationship of a parent shall not be terminated by relinquishment proceedings unless the parent joins in the petition.

(b) The relinquishing parent, child placement agency, and county department of social services shall provide the court any and all information described in section 19-1-103 (80) that is available to such relinquishing parent, agency, or county department.

(5) The court shall not issue an order of relinquishment until it is satisfied that the relinquishing parent and the child, if determined appropriate by the court, have been counseled pursuant to subsection (1) of this section and this subsection (5) and fully advised of the consequences of the parent's act. The court may order counseling for any age child to be relinquished if the court deems such counseling would be in the child's best interests. The court may order that a child younger than twelve years of age be prepared for relinquishment, termination of parental rights, or adoption.

(6) If the court finds after the hearing that it is in the best interests of the child that no relinquishment be granted, the court shall enter an order dismissing the action.

(7) (a) The court shall enter an order of relinquishment if the court finds after the hearing that:

(I) The relinquishing parent or parents and any child that the court directed into counseling have been counseled as provided in subsections (1) and (5) of this section; and

(II) The parent's decision to relinquish is knowing and voluntary and not the result of any threats, coercion, or undue influence or inducements; and

(III) The relinquishment would best serve the interests of the child to be relinquished.

(b) There shall be a rebuttable presumption that a relinquishment would not be in the child's best interests if the child is twelve years of age or older and objects to the relinquishment.

(8) If the court is not satisfied that the relinquishing parents and the child, if twelve years of age or older, have been offered proper and sufficient counsel and advice, it shall continue the matter for such time as the court deems necessary.

(9) (a) The court may appoint a guardian ad litem to protect the interests of the child if:

(I) The court finds that there is a conflict of interest between the child and his or her parents, guardian, or legal custodian;

(II) The court finds that such appointment would be in the best interests of the child; or

(III) The court determines that the child is twelve years of age or older and that the welfare of the child mandates such appointment.

(b) Reasonable fees for guardians ad litem appointed pursuant to this subsection (9) shall be paid by the relinquishing parent or parents; except that, in the case of an indigent parent or parents, such fees shall be paid as an expense of the state from annual appropriations to the office of the state court administrator.

(10) The court may interview the child in chambers to ascertain the child's wishes as to the relinquishment proceedings. The court may permit counsel to be present at such an interview. The court shall cause a record of the interview to be made, and it shall be made a part of the record in the case.

(11) The court may seek the advice of professional personnel whether or not said personnel are employed on a regular basis by the court. Any advice given by professional persons shall be in writing and shall be made available by the court to attorneys of record, to the parties, and to any other expert witnesses upon request, but it shall be considered confidential for any other purposes, shall be sealed, and shall not be open to inspection except by consent of the court. Attorneys of record may call for the cross-examination of any professional persons consulted by the court.

(12) The provisions of this section, including but not limited to relinquishment counseling, notification, and the relinquishment hearing, shall apply in any case involving a child in Colorado or for whom Colorado is the home state as described in section 14-13-102 (7), C.R.S., including any case in which it is proposed that the child to be relinquished will be relinquished or adopted outside the state of Colorado.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 92:** (1)(b)(II) amended, p. 179, § 1, effective March 20. **L. 97:** Entire section amended, p. 1155, § 1, effective July 1. **L. 2000:** (2)(g) amended, p. 1373, § 6, effective July 1; (12) amended, p. 1538, § 6, effective July 1. **L. 2002:** (1.5) added, p. 787, § 8, effective May 30. **L. 2003:** (2.5) added, p. 872, § 2, effective July 1. **L. 2005:** (2)(g) amended, p. 992, § 4, effective July 1. **L. 2007:** (4)(a) amended, p. 115, § 5, effective July 1. **L. 2012:** (1.5)(b) amended, (SB 12-175), ch. 208, p. 875, § 135, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (1.5)(b) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (November 2002).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The purpose of this section is to prevent the relinquishment of a child by parents who do not realize the seriousness and finality of their acts. It does not provide that the department of wel-

fare or the court should argue with the parents concerning the reasons for their relinquishment or seek to thwart the exercise of their free and voluntary will. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Child is ward of state during proceedings. The initiation of any proceedings in a court in which the rights, status, and welfare of an infant may be affected immediately establishes the infant's relation to the court as that of its ward. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Power of court to grant petition is discretionary. This section, which confers upon the court jurisdiction of relinquishment procedures, vests in the trial court the discretionary power to grant or deny the petition for relinquishment. People in re K.W.E., 31 Colo. App. 219, 500 P.2d 167 (1972).

Relinquishment does not require known identity of adoptive parents. In relinquishing children the parents do not have the slightest idea as to who, if anyone, shall become the adoptive parents. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Evidence established consent was knowing and voluntary. Evidence that natural parents of child were fully advised of the seriousness and finality of relinquishing their child for adoption, and willingly and voluntarily sought to divest themselves of all legal rights and obligations with respect to such child, was sufficient to comply with the provisions of this section. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Denial of petition did not abuse discretion. Trial court does not abuse discretion in denying petition for relinquishment of child on basis of finding, supported by the record, that a mother is not in any position to make such an important decision. People in re K.W.E., 31 Colo. App. 219, 500 P.2d 167 (1972).

Grounds for reversal of order for relinquishment. Once the order for relinquishment has been granted, it cannot be reversed except where the court lacks jurisdiction, or when consent of the parents is obtained through fraud, overreaching pressure, or duress. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Where the child has not been adopted prior to an attack on a relinquishment decree and mistake and misunderstanding invalidated the parents' consent to the relinquishment, a court may reverse the final order of relinquishment. People In re J.B.P., 44 Colo. App. 95, 608 P.2d 847 (1980).

Void decree subject to collateral attack. Where statutory requirements are not met, the court cannot enter a valid adoption decree, and the decree is thereby absolutely void on its face and may be the subject of a collateral attack, and the lack of these jurisdictional matters made the decree subject to an attack at any stage of the proceedings or after entry of judgment. The lack of jurisdiction is usually shown by the judgment roll, and in adoption cases the record constitutes the judgment roll. Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

Motion to vacate order of relinquishment properly denied. In a proceeding by the natural parents of a minor child to set aside a relinquishment and consent to adoption, where it is shown that the court had jurisdiction, and there being no allegation of coercion, duress, or pressure exerted upon the parents to induce them to relinquish the child, a motion to vacate such consent was properly denied. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Time limit between petition and hearing. Although no time limit is prescribed by statute for hearing after the filing of a petition for the relinquishment and adoption of a minor child, reasonable time should elapse between the filing of the petition and a hearing thereon, permitting the court to examine into the facts to determine whether relinquishment is advisable under the circumstances. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Only parties of record and their attorneys are granted access to reports under this section. Where grandparent was never a proper party of record and did not have standing to become one in the relinquishment proceeding, she and her counsel were properly denied access to reports. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Standard of professional conduct in Colorado required attorney to discuss relinquishment counseling with his or her client in both in-state and out-of-state adoptions. Thus trial court properly submitted to the jury the issue of whether defendant attorney breached a duty of care to plaintiffs. Boyd v. Garvert, 9 P.3d 1161 (Colo. App. 2000) (case arose prior to enactment of subsection (12)).

19-5-103.5. Expedited relinquishment procedure - children under one year of age - other birth parents - notice - termination. (1) (a) Notwithstanding the provisions of section 19-5-103 to the contrary, a parent desiring to relinquish his or her child may seek an expedited order terminating his or her parent-child legal relationship without the necessity of a court hearing if:

(I) The child is under one year of age, at the time of filing the petition;

(II) The relinquishing parent is being assisted by a licensed child placement agency or the county department of social services in the county where such parent resides;

(III) The requirements of section 19-5-103 (1) have been met; and

(IV) The parent signs an affidavit stating his or her desire to voluntarily relinquish his or her parent-child legal relationship with the child and consenting to a waiver of his or her right to contest a termination of parentage.

(b) (I) The affidavit required to be signed by the parent seeking to relinquish his or her parental rights pursuant to this section shall advise the relinquishing parent of the consequences of the relinquishment decision and shall further advise the relinquishing parent that he or she is still required to obtain the relinquishment counseling described in section 19-5-103 (1) (a) and (2). The relinquishing parent shall be advised of the opportunity to seek independent counseling. The affidavit shall also advise the relinquishing parent that he or she may withdraw the affidavit anytime after signing it but before the affidavit and petition are filed with the court. The relinquishing parent may sign the affidavit before the birth of the child. The relinquishing birth parent may withdraw the affidavit from the child placement agency or county department of social services in the county where such parent resides any time after signing it but before the affidavit and petition are filed with the court.

(II) The affidavit shall include the following:

(A) A statement that the petitioner has completed the relinquishment counseling required in section 19-5-103 (1) and (2) or understands he or she must complete the counseling prior to entry of the order of termination;

(B) A statement that the child to be relinquished is under one year of age at the time of filing the petition;

(C) A statement that the relinquishing parent's decision is knowing and voluntary and not the result of threats, coercion, or undue influence or inducements; and

(D) A statement that the relinquishing parent believes the relinquishment is in the best interests of the child.

(III) The relinquishing parent's signature on the affidavit shall be witnessed by two witnesses, one of whom shall be either a representative of the licensed child placement agency with which the relinquishing parent has contracted or a representative of the county department of social services in the county where such parent resides, whichever is assisting the parent. The other witness shall not be associated with either the licensed child placement agency or the county department of social services in the county where such parent resides, whichever is assisting the parent, and shall not be the potential adoptive parent of the child to be relinquished.

(IV) The affidavit shall be notarized and shall be attached to the petition for relinquishment and filed with the court after the birth of the child. The petition for relinquishment may not be filed until at least four days after the birth of the child.

(c) If the birth parent has signed the affidavit described in this subsection (1) and if it is properly witnessed and notarized and attached to the petition, the court may vacate the hearing required pursuant to section 19-5-103 (3) and, upon making the findings set forth in section 19-5-103 (7) (a), shall enter an order of relinquishment, without a hearing, no more than seven business days after the date of the filing of the petition for relinquishment and the accompanying affidavit.

(2) (a) Notwithstanding the provisions of section 19-5-105 to the contrary, in those cases in which a parent seeks to relinquish his or her parent-child legal relationship with a child pursuant to this section, the licensed child placement agency or the county department of social services assisting the relinquishing parent shall proceed with filing the petition for termination of the other birth parent's or possible birth parents' parent-child legal relationship and notify pursuant to this section the other birth parent or possible birth parents identified pursuant to section 19-5-105 (2).

(b) Notice of the proceeding pursuant to this section shall be given to every person identified as the other birth parent or a possible birth parent in the manner appropriate under the Colorado rules of juvenile procedure for the service of process or in any manner the court directs; except that notice shall not be required to be given to a person who has received notice pursuant to section 19-5-103.7 if the person waives the right to contest a termination of parental rights and waives the right to further notice concerning the expedited relinquishment or if the person fails to reply as required pursuant to section 19-5-103.7. The notice shall inform the parent or alleged parent whose rights are to be determined that failure to file an answer or to appear within twenty-one days after service

and, in the case of an alleged father, failure to file a claim of paternity under article 4 of this title within twenty-one days after service, if a claim has not previously been filed, may likely result in termination of the parent's or the alleged parent's parental rights to the child. The notice shall also inform the parent or alleged parent whose rights are to be determined that the person has the right to waive his or her right to appear and contest and that failure to appear and contest may likely result in termination of the parent's or the alleged parent's parental rights to the child. Proof of giving the notice shall be filed with the court before the petition is heard or otherwise acted upon. If no person has been identified as the birth parent, the court shall order that notice be provided to all possible birth parents by publication or public posting of the notice at times and in the places and manner the court deems appropriate.

(c) The other birth parent or possible birth parents may sign the affidavit of voluntary relinquishment described in subsection (1) of this section. Such birth parent may sign the affidavit prior to the birth of the child. If the other birth parent or possible birth parent signs an affidavit of voluntary relinquishment, he or she may withdraw the affidavit from the child placement agency or the county department of social services assisting the relinquishing parent any time after signing it but before the affidavit and petition are filed with the court.

(d) (I) The court shall vacate the proceeding and, at the time of the review of the case pursuant to paragraph (c) of subsection (1) of this section, enter an order terminating the parent-child legal relationship of the other birth parent or possible birth parent if the other birth parent or possible birth parent:

(A) Has waived his or her right to contest the termination of parental rights; or

(B) Has failed to appear and contest or to file an answer to the petition for termination or to file a paternity action within the prescribed twenty-one days following the date of the service, publication, or posting of the notice as provided in the notice pursuant to paragraph (b) of this subsection (2); or

(C) Has signed the affidavit of voluntary relinquishment described in subsection (1) of this section; or

(D) Has waived his or her right to notice and right to contest the termination of parental rights pursuant to section 19-5-103.7.

(II) If the provisions of subparagraph (I) of this paragraph (d) do not apply and the other birth parent or possible birth parent expresses his or her desire to appear and contest the termination of the parent-child legal relationship, the court shall proceed with a hearing on the petition for termination of the other birth parent's parent-child legal relationship.

(3) The licensed child placement agency or the county department of social services assisting the relinquishing parent shall not submit the documents referenced in subsections (1) and (2) of this section for judicial review unless a permanent placement for the child has been identified.

(4) The court shall not be bound to enter an order terminating a parent-child legal relationship upon the affidavit of the relinquishing parent pursuant to subsection (1) of this section and the court shall not be bound to enter an order terminating a parent-child legal relationship of the other birth parent or possible birth parents pursuant to subsection (2) of this section, but the court may, upon its own motion, require that a formal hearing be held to determine any or all issues presented by the pleadings.

Source: L. 2003: Entire section added, p. 869, § 1, effective July 1. **L. 2004:** (2)(a) amended, p. 263, § 1, effective April 5. **L. 2005:** (2)(b) and (2)(d) amended, p. 101, § 2, effective July 1. **L. 2007:** (2)(a) and (2)(d)(II) amended, p. 114, § 4, effective July 1. **L. 2012:** (2)(b) and (2)(d)(I)(B) amended, (SB 12-175), ch. 208, p. 875, § 136, effective July 1.

Editor's note: Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsections (2)(b) and (2)(d)(I)(B) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Birth parents are not precluded from withdrawing expedited relinquishment petitions. In re A.T.M., 205 P.3d 703 (Colo. App. 2010).

Until a petition is actually granted, nothing in the statute makes it irrevocable. In re A.T.M., 205 P.3d 703 (Colo. App. 2010).

Notice through publication inadequate where birth mother had knowledge of father's location. Birth mother's fraudulent misrepresentations to the court deprived birth father of his constitutional right to due process, thus making the judgment terminating his parental rights void by default. In re C.L.S., 252 P.3d 556 (Colo. App. 2011).

19-5-103.7. Anticipated expedited relinquishment - children under one year of age - notice to other or possible parent - administrative procedures. (1) Notwithstanding any provision of section 19-5-103 to the contrary, a licensed child placement agency assisting a parent who plans to relinquish a child through an expedited relinquishment pursuant to section 19-5-103.5, may provide notice of the anticipated expedited relinquishment on behalf of the relinquishing parent to any other birth parent or possible birth parent identified pursuant to section 19-5-105 (2) who is not a presumed parent pursuant to section 19-4-105 (1).

(2) The licensed child placement agency may give notice of the anticipated expedited relinquishment prior to or after the filing of the affidavit and petition with the court, but not more than sixty-three days prior to the anticipated birth of the child to be relinquished.

(3) (a) Notice to the other birth parent or possible birth parent given pursuant to this section shall be provided:

(I) By publication appearing in a newspaper of general circulation in the county of the person's last known address, if the person's identity is known, or the county in which the relinquishing parent reports the conception to have occurred. Notice by publication is only proper if a person has not been identified as the other birth parent or possible birth parent or the location of the other birth parent or possible birth parent has not been determined after diligent efforts.

(II) In person, delivered:

(A) In a manner appropriate under the Colorado rules of juvenile procedure for the service of process; or

(B) By an employee or a representative of the licensed child placement agency assisting the relinquishing parent, with a requirement that the other birth parent or possible birth parent sign a statement acknowledging receipt of the notice; or

(III) By certified mail to only the other birth parent or possible birth parent, return receipt requested, with return receipt providing prima facie evidence of service.

(b) The date of notice shall be considered either the date on which the notice is delivered pursuant to subparagraph (II) of paragraph (a) of this subsection (3) or the date on the return receipt for notice given by certified mail pursuant to subparagraph (III) of paragraph (a) of this subsection (3), whichever is applicable. If notice is provided by publication, the date of notice shall be the date of the first day of publication.

(4) (a) Notice of the anticipated expedited relinquishment given pursuant to this section shall include the name, mailing address, and physical address of the licensed child placement agency providing the notice and shall inform the other birth parent or possible birth parent of the following:

(I) The name of the parent of the child who anticipates seeking to relinquish his or her parental rights for purposes of the child's adoption and the anticipated date of birth or the actual date of birth of the child;

(II) That the other birth parent or possible birth parent has been identified by the parent who anticipates seeking to relinquish his or her parental rights as potentially being the other birth parent of the child, or, if no other birth parent or possible birth parent has been identified, that the parent who anticipates seeking to relinquish his or her parental rights is unable to identify the other birth parent or possible birth parent;

(III) That placing a child for adoption requires termination of the child's parent-child legal relationships;

(IV) That the other birth parent or possible birth parent has a right to contest the termination of parental rights; and

(V) That failure to declare an intent to contest the termination of parental rights may likely result in a termination of the person's parental rights to the child, and that, to declare an intent to contest the termination of the parent-child legal relationship, the other birth parent or possible birth parent shall:

(A) No later than twenty-one days after the date of notice pursuant to paragraph (b) of subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later, either return a reply form to the licensed child placement agency by certified mail, return receipt requested, or personally appear at the licensed child placement agency to declare an intent to contest the termination of parental rights; and

(B) No later than twenty-one days after the date of notice pursuant to paragraph (b) of subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later, file a claim of paternity pursuant to article 4 of this title and notify the licensed child placement agency pursuant to section 19-4-105.5 (4);

(VI) That the other birth parent or possible birth parent may waive the right to contest the termination of parental rights and that waiver may likely result in a termination of the person's parental rights to the child; and

(VII) That further notice related to the anticipated expedited relinquishment proceedings shall not be provided to the other birth parent or possible birth parent without receipt of a response required by subparagraph (V) of this paragraph (a).

(b) (I) Except when notice is provided by publication, the licensed child placement agency assisting the relinquishing parent with an expedited relinquishment shall send or deliver a reply form described in sub-subparagraph (A) of subparagraph (V) of paragraph (a) of this subsection (4) to the other birth parent or possible birth parent at the same time and by the same method as the delivery of notice given pursuant to subsection (3) of this section. The reply form sent pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall be signed by the other birth parent or possible birth parent, witnessed, and dated, and shall require the other birth parent or possible birth parent to disclose the following information to the licensed child placement agency:

(A) The full name of the other birth parent or possible birth parent;

(B) The name of the relinquishing parent and the anticipated date of birth or the actual date of birth of the child to be relinquished, as listed on the notice;

(C) The other birth parent's or possible birth parent's address;

(D) The case number of the pending action filed, if any, by the other birth parent or the possible birth parent for determination of the parent-child legal relationship pertaining to the child to be relinquished; and

(E) If a case concerning the determination of the parent-child legal relationship pertaining to the child to be relinquished has been filed, a copy of any court orders issued regarding the other birth parent's or possible birth parent's parent-child legal relationship.

(II) In addition to the requirements of subparagraph (I) of this paragraph (b), the reply form sent or delivered pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall provide response options for selection by the other birth parent or the possible birth parent replying to the notice, which response options shall be substantially similar to the following:

(A) That the person replying to the notice acknowledges that there may be a parent-child legal relationship, declares an intent to contest the termination of parental rights, and declares an intent to seek to have the court make this determination;

(B) That the person replying to the notice acknowledges that there may be a parent-child legal relationship, waives the right to contest a termination of parental rights, and waives the right to further notice concerning the expedited relinquishment and the termination of parental rights with respect to the child; and

(C) That the person replying to the notice does not acknowledge that there may be a parent-child legal relationship, waives the right to contest a termination of parental rights, and waives the right to further notice concerning the expedited relinquishment and the termination of parental rights with respect to the child.

(III) In addition to the requirements of subparagraphs (I) and (II) of this paragraph (b), the reply form sent or delivered pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall include a statement of acknowledgment by the other birth parent or possible birth parent that there is a requirement to file a claim of paternity and to notify the licensed child placement agency pursuant to section 19-4-105.5 (4) no later than twenty days after the date of notice or before a relinquishment petition is filed with the court, whichever occurs later.

(5) To properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to this section, the other birth parent or possible birth parent shall, no later than twenty days after receiving notice pursuant to subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later:

(a) Return a reply form to the licensed child placement agency by certified mail, return receipt requested, or, for other birth parents or possible birth parents who receive notice by publication or who otherwise decide not to return the reply form by certified mail, personally appear at the licensed child placement agency to declare an intent to contest the termination of parental rights in the anticipated proceedings; and

(b) File a claim of paternity pursuant to article 4 of this title and notify the licensed child placement agency pursuant to section 19-4-105.5 (4).

(6) The other birth parent or possible birth parent who is served with notice pursuant to subsection (3) of this section and fails to reply as required in subsection (5) of this section irrevocably waives the right to further notice of proceedings related to the anticipated expedited relinquishment and irrevocably waives the right to appear and contest the termination of his or her parental rights, unless the other birth parent or possible birth parent proves, by clear and convincing evidence, the following:

(a) That it was not possible for the other birth parent or possible birth parent to properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to the requirements of subsection (5) of this section; and

(b) That the other birth parent or possible birth parent did properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to the requirements of subsection (5) of this section within twenty days after it became possible for the other birth parent or possible birth parent to do so.

(7) (a) If the other birth parent or possible birth parent replies to the notice provided pursuant to subsection (3) of this section by returning the reply form via certified mail to the licensed child placement agency that sent the notice, the licensed child placement agency shall accept and file the original reply form with the court upon filing the petition for relinquishment or upon receipt of the reply form, whichever occurs later. The date of the reply shall be then noted on the return receipt.

(b) If the other birth parent or possible birth parent replies to the notice provided pursuant to subsection (3) of this section by appearing in person at the licensed child placement agency to declare his or her response, the licensed child placement agency shall provide a reply form for the other birth parent or the possible birth parent to complete and sign. An agency or social services employee shall sign the form as a witness. The licensed child placement agency shall accept the completed, signed reply form, provide a copy of the form to the other birth parent or the possible birth parent, and file the original with the court upon filing the petition for relinquishment or upon receipt of the completed reply form, whichever occurs later. The date of the reply shall be the date on which the other birth parent or the possible birth parent signs the reply.

(c) (I) Notwithstanding any provision of this section to the contrary, if the other birth parent or possible birth parent replies to notice provided by publication pursuant to subsection (3) of this section by contacting the licensed child placement agency in a manner other than is specified in paragraph (b) of this subsection (7), and the other birth parent or possible birth parent provides his or her full name and address, the licensed child placement agency shall:

(A) Within seven days after the contact, and by certified mail, return receipt requested, send a reply form to the other birth parent or possible birth parent with a written statement informing the person that the date he or she contacted the licensed child placement agency in response to the notice received shall be considered his or her date of reply if he or she

returns the form no later than fourteen days after the date noted on the return receipt, and that, if he or she returns the form more than fourteen days after the date noted on the return receipt, the date the licensed child placement agency actually receives the reply form shall be considered his or her reply date; and

(B) Maintain a dated record to submit to the court of all communications made related to this paragraph (c).

(II) The date of reply provided in the manner described in this paragraph (c) shall be the date the other birth parent or possible birth parent contacts the licensed child placement agency in response to the notice received if he or she returns the form no later than fourteen days after the date noted on the return receipt of the form. If the other birth parent or possible birth parent returns the form more than fourteen days after the date noted on the return receipt, the date the reply is received by the licensed child placement agency shall be considered the reply date.

(d) Notwithstanding any provision of this section to the contrary, if the other birth parent or possible birth parent files a claim of paternity pursuant to article 4 of this title and provides notice to the licensed child placement agency pursuant to section 19-4-105.5, then such claim and notice shall be deemed to satisfy the requirements of subsection (5) of this section, so long as the claim of paternity is filed and notice is provided to the licensed child placement agency no later than twenty-one days after receiving notice pursuant to subsection (3) of this section or before a relinquishment petition is filed with the court.

(e) The other birth parent or possible birth parent who replies to a licensed child placement agency pursuant to this subsection (7) shall notify the agency of any change in his or her address.

(f) (I) Notwithstanding any provision of this section to the contrary, the licensed child placement agency shall respond as specified in subparagraph (II) of this paragraph (f) and shall not have the duty to respond as required in paragraph (a), (b), or (c) of this subsection (7) or to file any further documentation of a respondent's reply if, before the respondent replies to the notice as described in paragraph (a), (b), or (c) of this subsection (7), all of the following have occurred:

(A) The relinquishment petition has been filed with the court;

(B) At least twenty-one days have passed since the notice was provided; and

(C) The licensed child placement agency has filed the affidavit of administrative notice described in subsection (8) of this section with the court.

(II) If the requirements specified in subparagraph (I) of this paragraph (f) have been met before the respondent replies to the notice as described in paragraph (a), (b), or (c) of this subsection (7), the licensed child placement agency shall provide the respondent, to the extent of the agency's knowledge, with the following information:

(A) Verification that the petitions and affidavit have been filed;

(B) The court in which the case was filed;

(C) The case number; and

(D) Whether the court has ordered the termination of the respondent's parental rights.

(8) A licensed child placement agency that provides notice of the anticipated expedited relinquishment on behalf of the relinquishing parent to the other birth parent or possible birth parent pursuant to the provisions of this section shall have the duty to file with the court the following information at the time it files the petition for relinquishment:

(a) An affidavit of administrative notice with respect to the other birth parent or possible birth parent who has received notice pursuant to subsection (3) of this section, including the following information, if available:

(I) The method of providing notice;

(II) The date of notice;

(III) The deadline for reply;

(IV) The date of the reply;

(V) The intent declared in the reply;

(VI) A statement indicating whether an action relating to the parent and child legal relationship was filed;

(VII) A statement indicating whether the person's reply was timely; and

(VIII) A statement indicating that the expedited relinquishment was filed pursuant to section 19-5-103.5.

(b) In addition to the affidavit of administrative notice filed with the court pursuant to paragraph (a) of this subsection (8), the licensed child placement agency shall file all available evidence supporting the affidavit, including but not limited to signed return receipts, completed reply forms, affidavits of service of process, evidence of publication, evidence of the filing of an action relating to the parent and child legal relationship, and any other records of pertinent communication with the possible birth parent or other birth parent.

(9) Nothing in this section shall be construed to require a parent who plans to relinquish a child through an expedited relinquishment pursuant to section 19-5-103.5 to file the expedited relinquishment.

(10) Nothing in this section shall be construed to authorize the filing of a petition and affidavit of relinquishment prior to the birth of a child.

Source: L. 2005: Entire section added, p. 95, § 1, effective July 1. **L. 2007:** (3)(a)(II) amended and (7)(f) added, pp. 114, 113, §§ 3, 2, effective July 1. **L. 2012:** (2), (4)(a)(V), (7)(c)(I)(A), (7)(c)(II), (7)(d), and (7)(f)(I)(B) amended, (SB 12-175), ch. 208, p. 875, § 137, effective July 1.

Editor's note: Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsections (2), (4)(a)(V), (7)(c)(I)(A), (7)(c)(II), (7)(d), and (7)(f)(I)(B) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Statute does not bar a due process challenge to the termination of a parent's rights when the parent alleges a lack of notice or insufficient notice that results from the other parent's failure or refusal to identify him or her as a possible parent. District court erred in strictly applying the statute of limitations on due process challenge when insufficient notice was given. In re J.M.A., 240 P.3d 547 (Colo. App. 2010).

Notice through publication inadequate where birth mother had knowledge of father's location. Birth mother's fraudulent misrepresentations to the court deprived birth father of his constitutional right to due process, thus making the judgment terminating his parental rights void by default. In re C.L.S., 252 P.3d 556 (Colo. App. 2011).

19-5-104. Final order of relinquishment. (1) If the court terminates the parent-child legal relationship of both parents or of the only living parent, the court, after taking into account the religious background of the child, shall order guardianship of the person and legal custody transferred to:

(a) The county department of social services; or

(b) A licensed child placement agency; or

(c) A relative of the child; or

(d) An individual determined to be of good moral character through a process that includes the assessment made pursuant to section 19-5-206 (2) (g), if such individual shall have had the child living in his or her home for six months or more, including a foster parent or a designated adoptive parent.

(2) (a) The court shall consider, but shall not be bound by, a request that custody of the child, with the option of applying for adoption, be placed in a grandparent, aunt, uncle, brother, or sister of the child or a foster parent. When ordering legal custody of the child, the court shall give preference to a grandparent, aunt, uncle, brother, or sister of the child when such relative has made a timely request therefor and the court determines that such placement is in the best interests of the child. Such request must be submitted to the court prior to commencement of the hearing on the petition for relinquishment. If such legal custody is granted, guardianship of the child shall remain with the parent, if the legal parent-child relationship has not been terminated, or the guardianship shall be transferred

pursuant to subsection (1) of this section. Nothing in this section shall be construed to require the birth parents or the child placement agency with custody of the child to notify said relatives described in this subsection (2) of the pending relinquishment of parental rights. This subsection (2) shall not apply in cases where the birth parents have designated an adoptive family for the child or the birth parents have designated that legal custody of the child shall not be in a person described in this subsection (2) and where the child has not been in legal custody of a relative requesting guardianship or custody as described in this section or the child has not been in the physical custody of such relative for more than six months.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), in cases in which a parent is seeking to relinquish his or her parent-child legal relationship with more than one child of a sibling group at one time, if the county department or child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) No person shall be precluded from adopting a child solely because that person has been a child's foster parent.

(4) The order of relinquishment shall set forth all pertinent facts brought at the hearing, and, in addition, it shall state that the court is satisfied that the counsel and guidance provided for in section 19-5-103 (1) and (5) has been offered the relinquishing parent or parents and any child for whom the court has ordered counseling.

(5) A final order of relinquishment shall divest the relinquishing parent or parents of all legal rights and obligations they may have with respect to the child relinquished, but it shall not modify the child's status as an heir at law which shall cease only upon a subsequent final decree of adoption; except that the relinquishing parent's or parents' obligation to pay for services received by the child through the department, or other support received, shall be terminated upon a subsequent final decree of adoption or by order of the court at the time of relinquishment. The order of relinquishment shall release the relinquished child from all legal obligations with respect to the relinquishing parent or parents.

(6) If one parent files a petition for the relinquishment of a child and the agency or person having custody of the child files a petition to terminate the rights of the other parent pursuant to section 19-5-105, the court shall set a hearing, as expeditiously as possible, on the relinquishment petition. A court may enter an order of relinquishment for the purpose of adoption prior to the relinquishment or termination of the other parent's parental rights. Except as otherwise provided in subsection (7) of this section, an order of relinquishment is final and irrevocable.

(7) (a) A relinquishment may be revoked only if, within ninety-one days after the entry of the relinquishment order, the relinquishing parent establishes by clear and convincing evidence that such relinquishment was obtained by fraud or duress.

(b) Notwithstanding paragraph (a) of this subsection (7), a relinquishment may not be revoked on the basis that the relinquishment or termination of the other parent's parental rights was not obtained because the relinquishing parent knew, but did not disclose, the name or whereabouts of such other parent.

(8) If the relinquishment by an individual is revoked pursuant to subsection (7) of this section and no grounds exist under section 19-5-105 or under part 6 of article 3 of this title for terminating the parental rights of that individual, the court shall dismiss any proceeding for adoption and shall provide for the care and custody of the child according to the child's best interests.

(9) The fact that the relinquishing parent or parents are minors shall in no way affect the validity of the final order of relinquishment.

Source: L. 87: Entire title R&RE, p. 802, § 1, effective October 1. **L. 88:** (1)(d) and (2) amended and (2.5) added, p. 757, § 3, effective May 31. **L. 94:** (4.3), (4.5), and (4.7) added, p. 747, § 2, effective April 20; (4) amended, p. 2688, § 210, effective July 1. **L. 97:** Entire section amended, p. 1158, § 2, effective July 1. **L. 2003:** (2) amended, p. 2627, § 8,

effective June 5. **L. 2010:** IP(1) and (1)(d) amended, (HB 10-1106), ch. 278, p. 1273, § 3, effective May 26. **L. 2012:** (7)(a) amended, (SB 12-175), ch. 208, p. 877, § 138, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (7)(a) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Minors are competent to relinquish their children to a state agency. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

A partial or conditional relinquishment is not authorized by this section. People in re K.W.E., 31 Colo. App. 219, 500 P.2d 167 (1972).

Grounds for reversal of relinquishment order. Once the order for relinquishment has been granted, it cannot be reversed except where the court lacks jurisdiction or when consent of the parents is obtained through fraud, overreaching pressure, or duress. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

After relinquishment, parents have no control over adoption. Where parents voluntarily relinquish a child, the parents have by court decree been divested of all of their legal rights and obligations to said child. They have no control over the child or the adoption proceedings, notice to them is not required, their consent, if given, is meaningless. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Where both parents stated that they did not want the grandmother to have custody of the child and the grandmother had never had physical or legal custody of the child, the provisions of subsection (2) specifically operate to prevent the grandmother from having standing in the relinquishment proceedings. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

The proceedings for voluntary relinquishment under this section are separate and distinct from the proceedings for determining whether a child is dependent or neglected under § 19-3-605. Under dependency and neglect proceedings, the grandparent may be an interested party. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Adopted step-daughter not entitled to inheritance. After husband and wife were divorced and order of relinquishment became final, daughter from wife's former marriage, who had been adopted by husband, was divested of her status as heir. In re Estate of Haddan, 874 P.2d 1081 (Colo. App. 1994).

Applied, with respect to grandparents' request, in People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

19-5-105. Proceeding to terminate parent-child legal relationship. (1) If one parent relinquishes or proposes to relinquish or consents to the adoption of a child, the agency or person having custody of the child shall file a petition in the juvenile court to terminate the parent-child legal relationship of the other parent, unless the other parent's relationship to the child has been previously terminated or determined by a court not to exist. This section applies whether or not the other parent is a presumed parent pursuant to section 19-4-105 (1).

(2) In an effort to identify the other birth parent, the court shall cause inquiry to be made of the known parent and any other appropriate person. The inquiry shall include the following: Whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(3) If, after the inquiry, the other birth parent is identified to the satisfaction of the court or if more than one person is identified as a possible parent, each shall be given notice of the proceeding in accordance with subsection (5) of this section, including notice of the

person's right to waive his or her right to appear and contest. If any of them waives his or her right to appear and contest or fails to appear or, if appearing, cannot personally assume legal and physical custody, taking into account the child's age, needs, and individual circumstances, such person's parent-child legal relationship with reference to the child shall be terminated. If the other birth parent or a person representing himself or herself to be the other birth parent appears and demonstrates the desire and ability to personally assume legal and physical custody of the child, taking into account the child's age, needs, and individual circumstances, the court shall proceed to determine parentage under article 4 of this title. If the court determines that the person is the other birth parent, the court shall set a hearing, as expeditiously as possible, to determine whether the interests of the child or of the community require that the other parent's rights be terminated or, if they are not terminated, to determine whether:

(a) To award custody to the other birth parent or to the physical custodian of the child; or

(b) To direct that a dependency and neglect action be filed pursuant to part 5 of article 3 of this title with appropriate orders for the protection of the child during the pendency of the action.

(3.1) The court may order the termination of the other birth parent's parental rights upon a finding that termination is in the best interests of the child and that there is clear and convincing evidence of one or more of the following:

(a) That the parent is unfit. In considering the fitness of the child's parent, the court shall consider, but shall not be limited to, the following:

(I) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely, within a reasonable period of time, to care for the ongoing physical, mental, and emotional needs of the child;

(II) A single incident of life-threatening or serious bodily injury or disfigurement of the child or other children;

(III) Conduct toward the child or other children of a physically or sexually abusive nature;

(IV) A history of violent behavior that demonstrates that the individual is unfit to maintain a parent-child relationship with the minor;

(V) Excessive use of intoxicating liquors or use of controlled substances, as defined in section 18-18-102 (5), C.R.S., that affects the ability of the individual to care and provide for the child;

(VI) Neglect of the child or other children;

(VII) Injury or death of a sibling or other children due to proven abuse or neglect by such parent;

(VIII) Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected in a proceeding under article 3 of this title or comparable proceedings under the laws of another state or the federal government;

(IX) Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated pursuant to this section or article 3 of this title or comparable proceedings under the laws of another state or the federal government.

(b) That the parent has not established a substantial, positive relationship with the child. The court shall consider, but shall not be limited to, the following in determining whether the parent has established a substantial, positive relationship with the child:

(I) Whether the parent has maintained regular and meaningful contact with the child;

(II) Whether the parent has openly lived with the child for at least one hundred eighty days within the year preceding the filing of the relinquishment petition or, if the child is less than one year old at the time of the filing of the relinquishment petition, for at least one-half of the child's life; and

(III) Whether the parent has openly held out the child as his or her own child.

(c) That the parent has not promptly taken substantial parental responsibility for the child. In making this determination the court shall consider, but shall not be limited to, the following:

(I) Whether the parent who is the subject of the petition is served with notice and fails to file an answer within thirty-five days after service of the notice and petition to terminate

the parent-child legal relationship, or within twenty-one days if the petition for termination was filed pursuant to section 19-5-103.5, or fails to file a paternity action, pursuant to article 4 of this title, within thirty-five days after the birth of the child or within thirty-five days after receiving notice that he is the father or likely father of the child, or, for those petitions filed pursuant to section 19-5-103.5, within twenty-one days after the birth of the child or after receiving notice that he is the father or likely father of the child;

(II) Whether the parent has failed to pay regular and reasonable support for the care of the child, according to that parent's means; and

(III) Whether the birth father has failed to substantially assist the mother in the payment of the medical, hospital, and nursing expenses, according to that parent's means, incurred in connection with the pregnancy and birth of the child.

(3.2) In considering the termination of a parent's parental rights, the court shall give paramount consideration to the physical, mental, and emotional conditions and needs of the child. Such consideration shall specifically include whether the child has formed a strong, positive bond with the child's physical custodian, the time period that the bond has existed, and whether removal of the child from the physical custodian would likely cause significant psychological harm to the child.

(3.3) If the child is under one year of age at the time that the relinquishment petition is filed, there is an affirmative defense to any allegations under subparagraph (VI) of paragraph (a), paragraph (b), and paragraph (c) of subsection (3.1) of this section that the parent's neglect, failure to establish a substantial relationship, or failure to take substantial responsibility for the child was due to impediments created by the other parent or person having custody. A parent shall demonstrate such impediments created by the other parent or person having custody by a preponderance of the evidence.

(3.4) (a) If the court determines not to terminate the nonrelinquishing parent's parental rights nor to direct that a dependency and neglect action be filed, the court shall proceed to determine custody of the child, parenting time with the child, duty of support, and recovery of child support debt.

(b) The court shall determine custody based upon the best interests of the child giving paramount consideration to the physical, mental, and emotional conditions and needs of the child.

(c) If the child has been out of his or her birth parents' care for more than one year, irrespective of incidental communications or visits from the relinquishing or nonrelinquishing parent, there is a rebuttable presumption that the best interests of the child will be served by granting custody to the person in whose care the child has been for that period. Such presumption may be overcome by a preponderance of the evidence.

(3.5) Notwithstanding subsection (3.4) of this section, the court shall grant custody of the child to the nonrelinquishing birth parent if the court finds that the birth parent has the ability and the desire to assume personally legal and physical custody of the child promptly and that all of the following exists:

(a) The nonrelinquishing parent has established a substantial, positive relationship with the child;

(b) The nonrelinquishing parent has promptly taken substantial parental responsibility for the child; and

(c) The award of custody to the nonrelinquishing parent is in the best interests of the child.

(3.6) Except for a parent whose parental rights have been relinquished pursuant to section 19-5-104, a person who has or did have the child in his or her care has the right to intervene as an interested party and to present evidence to the court regarding the nonrelinquishing parent's contact, communication, and relationship with the child. If custody is at issue pursuant to subsection (3.4) of this section, such person also has the right to present evidence regarding the best interests of the child and his or her own suitability as a placement for the child.

(4) If, after the inquiry, the court is unable to identify the other birth parent or any other possible birth parent and no person has appeared claiming to be the other birth parent and claiming custodial rights, the court shall enter an order terminating the unknown birth parent's parent-child legal relationship with reference to the child. Subject to the disposition

of an appeal upon the expiration of thirty-five days after an order terminating a parent-child legal relationship is issued under subsection (3) of this section or this subsection (4), the order cannot be questioned by any person, in any manner, or upon any ground, except fraud upon the court or fraud upon a party. Upon an allegation of fraud, the termination order cannot be questioned by any person, in any manner or upon any ground, after the expiration of ninety-one days from the date that the order was entered.

(5) Notice of the proceeding shall be given to every person identified as the other birth parent or a possible birth parent in the manner appropriate under the Colorado rules of juvenile procedure for the service of process or in any manner the court directs. The notice shall inform the parent or alleged parent whose rights are to be determined that failure to file an answer or to appear within thirty-five days after service and, in the case of an alleged father, failure to file a claim of paternity under article 4 of this title within thirty-five days after service, if a claim has not previously been filed, may likely result in termination of the parent's or the alleged parent's parental rights to the minor. The notice also shall inform the parent or alleged parent whose rights are to be determined that such person has the right to waive his or her right to appear and contest and that failure to appear and contest may likely result in termination of the parent's or the alleged parent's parental rights to the minor. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the birth parent, the court shall order that notice be provided to all possible parents by publication or public posting of the notice at times and in places and manner the court deems appropriate.

(6) In those cases in which a parent proposes to relinquish his or her parent-child legal relationship with a child who is under one year of age, pursuant to the expedited procedures set forth in section 19-5-103.5, the licensed child placement agency or the county department of social services assisting the relinquishing parent shall proceed with filing the petition for termination of the other birth parent's or possible birth parents' parent-child legal relationship and notify the other birth parent or possible birth parents as provided in section 19-5-103.5 (2).

Source: L. 87: Entire title R&RE, p. 803, § 1, effective October 1. **L. 94:** Entire section amended, p. 747, § 3, effective April 20. **L. 97:** IP(3), (3.1)(c)(I), and (5) amended, p. 1160, § 3, effective July 1. **L. 98:** (3.1)(a)(II) amended, p. 1421, § 8, effective July 1. **L. 2001:** (3.1)(a)(VI) amended and (3.1)(a)(VIII) and (3.1)(a)(IX) added, p. 499, § 2, effective May 4. **L. 2003:** (3.1)(c)(I) amended and (6) added, p. 872, § 3, effective July 1. **L. 2012:** (3.1)(a)(V) amended, (HB 12-1311), ch. 281, p. 1625, § 62, effective July 1; (3.1)(c)(I), (4), and (5) amended, (SB 12-175), ch. 208, p. 877, § 139, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-126 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsections (3.1)(c)(I), (4), and (5) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "Relinquishment of Children in Colorado", see 15 Colo. Law. 2008 (1986).

No due process right for an incarcerated parent to be present at termination hearings where parent appeared in proceeding through counsel, presented evidence as to parole date by affidavit, and submitted a brief. Matter of Catholic Charities, 942 P.2d 1380 (Colo. App. 1997).

C.A.R. 3.4 does not violate plaintiff's constitutional right to equal protection because parents whose rights are terminated under this article of the Colorado Children's Code are not similarly situated to those parents whose rights are terminated under article 3 of the code. C.A.R. 3.4 applies to parents subject to dependency and neglect proceedings under article 3 of the Colorado Children's Code. As such, the proceedings focus primarily on the protection and safety of the children, not on the

custodial interests of the parent. Further, such a proceeding can be initiated only by the state. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

The express purposes of the relinquishment and adoption statutes is to promote the integrity and finality of adoption. Court did not misconstrue this section in finding that the father was unable personally to assume custody of the child promptly. Matter of Catholic Charities, 942 P.2d 1380 (Colo. App. 1997).

The general assembly intended that custody be given only if that parent can promptly assume ongoing parental responsibility for the child. Had the general assembly intended to allow a nonrelinquishing parent to avoid termination by making alternative custodial arrangements, it would have so provided. Matter of Catholic Charities, 942 P.2d 1380 (Colo. App. 1997).

Section does not authorize termination of the parent-child legal relationship of the other parent in anticipation of possible stepparent adoption. Statutes governing parental relinquishment and adoption must be read together in order to effectuate the legislative intent and give consistent, harmonious, and sensible effect to all their parts. Thus, since mother wanted to keep her relationship intact but involuntarily end father's in order to make children available for stepparent adoption, reliance on this section was inappropriate. In re D.S.L., 18 P.3d 856 (Colo. App. 2001).

Any defect in subject matter jurisdiction resulting from a parent not having custody of child at time of filing petition to terminate parental rights is cured by the filing of subsequent petitions to terminate by agency and adoptive parents. People in the Matter of A.L.B., 994 P.2d 476 (Colo. App. 1999).

Statute does not bar a due process challenge to the termination of a parent's rights when the parent alleges a lack of notice or insufficient notice that results from the other parent's failure or refusal to identify him or her as a possible parent. District court erred in strictly applying the statute of limitations on due process challenge when insufficient notice was given. In re J.M.A., 240 P.3d 547 (Colo. App. 2010).

Father's motion for relief not time-barred because judgment was void. Where notice through publication was inadequate because birth mother made fraudulent misrepresentations to the court, birth father was deprived of his constitutional right to due process, thus making the judgment terminating his parental rights void by default. The requirements of due process take precedence over statutory enactments. In re C.L.S., 252 P.3d 556 (Colo. App. 2011).

19-5-106. Records. (Repealed)

Source: L. 87: Entire title R&RE, p. 804, § 1, effective October 1. **L. 89:** Entire section amended, p. 943, § 3, effective March 27. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-5-107. When notice of relinquishment proceedings required. (Repealed)

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 13, effective July 1. **L. 92:** Entire section amended, p. 2175, § 30, effective June 2. **L. 94:** Entire section repealed, p. 752, § 4, effective April 20.

19-5-108. When notice of relinquishment proceedings required. If the custodial parent has assigned rights to support for a child who is the subject of relinquishment proceedings to the department of human services, notice of the relinquishment proceedings shall be given, by the parent proposing to relinquish a child or by that parent's counsel, to the appropriate delegate child support enforcement unit in cases where there is no adoption proceeding pending.

Source: L. 96: Entire section added, p. 613, § 15, effective July 1.

PART 2

ADOPTION

19-5-200.2. Legislative declaration. (1) Notwithstanding any other provisions of this title to the contrary, it is the intent of the general assembly that the court shall protect

and promote the best interests of the children who are the subjects of proceedings held pursuant to this part 2 while giving due regard to the interests of any other individuals affected.

(2) The general assembly hereby finds and declares that:

(a) It is beneficial for a child placed for adoption to be able to continue relationships with his or her brothers and sisters, regardless of age, in order that the siblings may share their strengths and association in their everyday and often common experiences;

(b) When parents and other adult relatives are no longer available to a child, the child's siblings constitute his or her biological family;

(c) When placing children in adoptive placements, efforts should be made to place siblings together, unless there is a danger of specific harm to a child or it is not in the child's or children's best interests to be placed together. The general assembly further finds that if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, there should be a rebuttable presumption that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption should be rebuttable by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

Source: L. 94: Entire section added, p. 1198, § 1, effective May 19. **L. 2000:** Entire section amended, p. 476, § 6, effective July 1. **L. 2003:** (2)(c) amended, p. 2627, § 9, effective June 5.

19-5-201. Who may be adopted. Any child under eighteen years of age present in the state at the time the petition for adoption is filed and legally available for adoption as provided in section 19-5-203 may be adopted. Upon approval of the court, a person eighteen years of age or older and under twenty-one years of age may be adopted as a child, and all provisions of this part 2 referring to the adoption of a child shall apply to such a person.

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law, 1057 (1983). For article, "Lawful Permanent Residence and Citizenship for the Adopted Foreign Child", see 15 Colo. Law. 2207 (1986).

Trial court did not err in exercising jurisdiction in adoption proceeding where child had been in the state for the preceding 23 months and had been placed in the state with the parents' permission. In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007).

19-5-202. Who may adopt. (1) Any person twenty-one years of age or older, including a foster parent, may petition the court to decree an adoption.

(2) A minor, upon approval of the court, may petition the court to decree an adoption.

(3) A person having a living spouse from whom he is not legally separated shall petition jointly with such spouse, unless such spouse is the natural parent of the child to be adopted or has previously adopted the child.

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 88:** (1) amended, p. 758, § 4, effective May 31.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law, 1057 (1983). For article, "Lawful Permanent Residence and Citizenship for the Adopted Foreign Child", see 15 Colo. Law. 2207 (1986).

19-5-202.5. Adoption hearings - termination appeals - court docket priority - exceptions. (1) On and after July 1, 2002, any hearing concerning a petition for adoption filed in a district court, the Colorado court of appeals, or the Colorado supreme court and any hearing concerning a petition filed in the Colorado court of appeals or the Colorado supreme court related to a child who is available for adoption due to an order of the court terminating the parent-child legal relationship shall be given a priority on the court's docket. On and after July 1, 2002, if there is no determination on a case concerning a petition for adoption or a case concerning a child who is available for adoption due to an order of the court terminating the parent-child legal relationship by any such court within six months of the filing of the petition, it shall be given a priority on the court's docket that supersedes the priority of any other priority civil hearing on the court's docket.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall affect the priority of a hearing concerning the issuance of a temporary protection order pursuant to section 13-14-102, C.R.S.

(3) The provisions of this section shall be implemented within existing appropriations.

Source: L. 2002: Entire section added, p. 1643, § 1, effective July 1. **L. 2003:** (2) amended, p. 1016, § 28, effective July 1. **L. 2004:** (2) amended, p. 557, § 16, effective July 1.

19-5-203. Availability for adoption. (1) A child may be available for adoption only upon:

(a) Order of the court terminating the parent-child legal relationship in a proceeding brought under article 3 or 5 of this title;

(b) Order of the court decreeing the voluntary relinquishment of the parent-child legal relationship under section 19-5-103, 19-5-103.5, or 19-5-105;

(c) Written and verified consent of the guardian of the person, appointed by the court, of a child whose parents are deceased;

(d) (I) Written and verified consent of the parent in a stepparent adoption where the other parent is deceased or his parent-child legal relationship has been terminated under paragraph (a) or (b) of this subsection (1);

(II) Written and verified consent of the parent in a stepparent adoption, accompanied by an affidavit or sworn testimony of such parent, that the other birth parent has abandoned the child for a period of one year or more or that the other birth parent has failed without cause to provide reasonable support for such child for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the other parent, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the other parent is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that, after diligent search, the address of the other parent remains unknown, the court shall order service upon the other parent by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such time, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(d.5) (I) Written and verified consent in a second-parent adoption that the child has a sole legal parent, and the sole legal parent wishes the child to be adopted by a specified second adult.

(II) In a petition for a second-parent adoption, the court shall require a written home study report prepared by a county department of social services, designated qualified

individual, or child placement agency and approved by the department pursuant to section 19-5-207.5 (2). If the child of a sole legal parent was adopted by that parent less than one hundred eighty-two days prior to the filing of an adoption petition by a second prospective parent and if the second prospective parent was included in the home study report that was prepared pursuant to section 19-5-207 for the adoption of the child by the first parent, then that home study report shall be a valid home study report for the purpose of the second parent's adoption. If the filing of a petition for adoption by the second prospective parent occurs one hundred eighty-two days or more after the adoption by the first parent, a separate home study report shall be required pursuant to section 19-5-207.

(e) Written and verified consent of the parent having only residual parental responsibilities when custody or parental responsibilities have been awarded or allocated to the other parent in a dissolution of marriage proceeding where the spouse of the parent having custody or parental responsibilities wishes to adopt the child;

(f) Written and verified consent of the parent or parents as defined in section 19-1-103 (82) in a stepparent adoption where the child is conceived and born out of wedlock;

(g) A statement by the department of human services or its designated agent as to whether any placement arranged outside the state of Colorado was carried out by a child placement agency licensed or authorized under the laws of another state to make placements;

(h) Verification by the child placement agency, a county department of social services, or the attorney for the petitioner in any adoption proceeding that any custody obtained outside the state of Colorado was acquired by:

(I) Proceedings to relinquish all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or

(II) Proceedings to terminate all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or

(III) Written and verified consent, under the conditions set forth in paragraphs (c) to (f) of this subsection (1), which was executed in accord with the laws of the state where granted or in substantial conformity with the laws of this state;

(i) Verification by the department of human services or its designated agent that any custody obtained outside the state of Colorado was acquired by proceedings sanctioned by the federal immigration and naturalization service, or any successor agency, in cooperation with the department of human services whenever such cooperation is authorized or advised by federal law;

(j) Submission of an affidavit or sworn testimony of the adoptive relative in a kinship adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed without cause to provide reasonable support for such child for a period of one year or more, and that the relative seeking the kinship adoption has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner, and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(k) Submission of an affidavit or sworn testimony of the legal custodian or legal guardian in a custodial adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed

without cause to provide reasonable support for such child for a period of one year or more and that the legal custodian or legal guardian seeking the custodial adoption has had the child in his or her physical custody for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent or birth parents is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner, and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(2) Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is twelve years of age or older.

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1; (1)(f) amended, p. 1587, § 61, effective October 1. **L. 94:** (1)(g) and (1)(i) amended, p. 2688, § 211, effective July 1. **L. 97:** (1)(d)(II) amended, p. 1161, § 4, effective July 1. **L. 98:** (1)(f) amended, p. 822, § 29, effective August 5; (1)(e) amended, p. 1410, § 73, effective February 1, 1999. **L. 99:** (1)(j) and (1)(k) added, p. 1062, § 3, effective June 1. **L. 2005:** (1)(b) amended, p. 765, § 25, effective June 1. **L. 2007:** (1)(d.5) added, p. 837, § 1, effective August 3. **L. 2011:** (1)(i) amended, (HB 11-1303), ch. 264, p. 1158, § 38, effective August 10. **L. 2012:** (1)(d)(II), (1)(d.5)(II), (1)(j), and (1)(k) amended, (SB 12-175), ch. 208, p. 878, § 140, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsections (1)(d)(II), (1)(d.5)(II), (1)(j), and (1)(k) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

I. General Consideration.
II. Consent and Availability Without Consent.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For note, "Batton v. Massar: The Finality of Colorado Adoptions", see 35 U. Colo. L. Rev. 314 (1963). For article, "Substantive Changes in Adoption and Relinquishment Law in Colorado", see 16 Colo. Law. 2183 (1987). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section held constitutional. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973).

C.A.R. 3.4 does not violate plaintiff's constitutional right to equal protection because parents whose rights are terminated under this article of the Colorado Children's Code are not similarly situated to parents whose rights are terminated under article 3 of the code. C.A.R. 3.4 applies to parents subject to dependency and neglect proceedings under article 3 of the Colorado Children's Code. As such, the proceedings focus primarily on the protection and safety of the children, not on the custodial interests of the parent. Further, such a proceeding can be initiated only by the state. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Purpose of section. The prime purpose of the provisions relating to adoption definitely pertain to the care, support, training, and welfare of children who are orphaned or left dependent

during minority. Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

The purpose of adoption proceedings is to change the status of a child and its adoptive parents and to create a new status, a new relationship of parent and child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

The general assembly has evidenced a benign policy toward adopted persons. People ex rel. Dunbar v. White, 144 Colo. 212, 355 P.2d 963 (1960).

This section and § 19-5-211, when viewed together, exclude from the reach of adoption statutes all form of adoption not otherwise expressly permitted. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996).

This section, when read together with § 19-5-211 contemplates two types of adoptions. The first is an adoption in which the rights of the parents are terminated by the court or are relinquished by the parents, or by the child's guardian if the parents are deceased. In such situation, final decree of adoption has effect of divesting the child's natural parents of all legal rights and obligations with respect to the child. The second is a "stepparent adoption", which constitutes the only exception to the general rule that an adoption divests both of the child's parents of all legal rights and duties relating to the child. This exception applies only when custodial parent is married to the adopting stepparent. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996); In re D.S.L., 18 P.3d 856 (Colo. App. 2001).

Reading the plain language of this section in harmony with other statutes relating to adoption, children of same-sex couple whose parents were not married and whose parents did not intend to relinquish or terminate custody of children were not available for adoption. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996).

Procedure mandatory. The procedure prescribed in subsection (1) cannot be ignored. Foley v. Carnesi, 123 Colo. 533, 232 P.2d 186 (1951).

Compliance with the provisions of the adoption statute is mandatory. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Petitioners lacked standing to seek custodial adoption after their temporary guardianship expired and they failed to provide proper notice to parents of hearing to extend guardianship. Although trial court extended temporary guardianship, that order was void for lack of notice to mother and father, therefore, petitioners lacked standing as the child's legal guardian. In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007).

Petitioners lacked standing as the child's legal custodians because, although they had physical custody of the child for more than one year, there had been no court action divesting the parents of legal custody. In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007).

"One year" in former subsection (1)(e)(II) (now subsection (1)(b)(II)) means the consecutive 12-month period immediately preceding the filing of the petition for stepparent adoption. In re R.H.N., 673 P.2d 805 (Colo. App. 1983); In re R.H.N., 710 P.2d 482 (Colo. 1985).

Responsibility of state to protect child's best interests. In an adoption proceeding, not only the custody, support, and education of a minor is involved, but one or both the parents may be deprived of their rights as parents. In such cases the state has an obligation to see that the best interests of the child and its welfare are served by the decree of adoption. Clerkin v. Geisendorfer, 137 Colo. 139, 323 P.2d 633 (1958).

The primary consideration in adoption proceedings is the welfare of the child, and secondly the rights of the parents. Moreau v. Buchholz, 124 Colo. 302, 236 P.2d 540 (1951).

Except when it is essential and of paramount necessity in the best interests of the child itself to provide otherwise, the law recognizes and enforces the right to the custody of their own children which nature gives to parents. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

In a valid adoption proceeding, the natural relationship of the parents is superseded by an artificial relationship, and courts should act with caution and circumspection in such proceedings, exerting every effort commensurate with the welfare of the child to prevail upon the natural parents to accept and fulfill their duties toward their child. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Parental rights (now parent-child legal relationship) must yield to interest and welfare of child. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973); In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

As child is ward of state. The initiation of any proceedings in a court in which the rights, status, and welfare of an infant may be affected immediately establishes the infant's relation to the court as that of its ward. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

The power of the state to sever the ties between parent and child should be exercised with extreme care and only when the evidence clearly establishes the necessity of so doing. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

In assessing whether a parent has abandoned a child, the court must examine the totality of the circumstances, viewed in light of the best interests of the child, which assessment must include recognition both that every child is entitled to support and nurturance and that, to preserve parental rights, a parent must give appropriate attention to parental responsibilities, with the primary consideration being the

welfare of the child second to the rights of the parents. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Where mother abandoned the child and did not have a relationship with the child, the court cannot benefit the best interests of the child by considering the prospects that the mother, having abandoned a child, may later seek to establish a relationship with the child where there has been no support and nurturance. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Intent component of abandonment not adequately shown where, for most of one-year period prior to filing of petition for stepparent adoption, biological father was under court order that prohibited any meaningful contact concerning child, yet during that time period father's legal actions demonstrated that he did not intend to permanently abandon his rights with respect to the child. In re J.A.V., 206 P.3d 467 (Colo. App. 2009).

Further, trial court erred in deferring to the stay in the parental responsibilities case and proceeding with the stepparent adoption absent a prior resolution of father's motion for parenting time. In re J.A.V., 206 P.3d 467 (Colo. App. 2009).

Abandonment inquiry focuses on intent. Court must determine whether, under the totality of the circumstances, the parent's intent during the twelve months preceding the filing of the petition for adoption was to abandon the child. The abandonment determination is a question of fact best determined by the trial court, and the appellate court erred in holding, essentially as a matter of law, that father's filing of the parenting-time motions prior to the filing of the adoption petition precluded a finding of intent to abandon. D.P.H. v. J.L.B., 260 P.3d 320 (Colo. 2011).

Court was not required to stay adoption proceeding pending outcome of parenting-time motion so long as court took into account the fact of the motion in making its abandonment determination. D.P.H. v. J.L.B., 260 P.3d 320 (Colo. 2011).

A stepparent adoption proceeding is not based on a societal responsibility to improve a child's situation. The best interest of the child is only one of the factors to be considered in evaluating a petition in such a proceeding. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A parent-child relationship may not be destroyed and a new one created by adoption solely because an official of the state may believe the child's welfare and the stepparent's convenience will be served by such actions. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Where a petition for stepparent adoption is before the court, the court may consider the natural parent's past conduct and other relevant considerations in making a determination as to whether it is unlikely that the natural parent will make future support payments on a regular and continuous basis. E.R.S. v. O.D.A., 779 P.2d 844 (Colo. 1989).

A stepparent adoption proceeding, like all other adoption proceedings, is concluded by a final decree of adoption. It is only when the final decree is entered that a natural parent is divested of all rights and obligations with respect to the child. People in Interest of S.M.O., 931 P.2d 572 (Colo. App. 1996).

A child is not available for adoption within the meaning of paragraph (f) of subsection (1), without the consent of both natural parents when both parents are living and the identity and whereabouts of both parents are known or ascertainable by due diligence. In re the Petition of S.O., 795 P.2d 254 (Colo. 1990).

Natural father's motion to set aside stepparent adoption was properly denied where father knowingly, intelligently, and voluntarily consented to his child's adoption by signing a waiver that was written in plain, clear, and unambiguous language. Father's claim that his consent was based on an understanding that he would receive visitation rights was insufficient to overcome the written consent and evidence that the father was sufficiently informed by court clerk as to the consequences of signing consent form. In re the Petition of S.O., 795 P.2d 254 (Colo. 1990).

Parent's incarceration. Incarceration is not a per se justification for failure to pay child support. The fact that a parent has been incarcerated for any or all of the 12-month period immediately preceding the filing of the petition is one factor to be considered by the court in making its determinations. In re R.H.N., 673 P.2d 805 (Colo. App. 1983); In re R.H.N., 710 P.2d 482 (Colo. 1985).

Determination of whether reasonable support was paid must be predicated on a party's financial circumstances rather than on a rigid interpretation of a support order entered at a prior time. In re R.H.N., 678 P.2d 1070 (Colo. App. 1984).

But parents are not excused from their obligation to support their children merely because their incomes are small. Although incarceration is a factual circumstance that the court may consider in deciding what level of support is reasonable, incarceration does not totally excuse a parent's obligation to provide some child support. In re R.H.N., 710 P.2d 482 (Colo. 1985).

Once court has determined that a natural parent has failed to provide child support during 12-month period preceding filing of petition under former subsection (1)(e)(II) (now subsection (1)(h)(II)), the court must look beyond the 12-month period to determine whether there is any likelihood that natural par-

ent will provide child support. In re R.H.N., 710 P.2d 482 (Colo. 1985).

Whether a parent has failed to provide "reasonable support" is question of fact to be determined by the trial court on a case by case basis. In re F.J.H., 628 P.2d 159 (Colo. App. 1981); In re R.H.N., 710 P.2d 482 (Colo. 1985).

And parental rights not terminated whenever parent fails to provide support. This section does not permit the termination of parental rights (now parent-child legal relationship) whenever a parent fails to provide the amount of support specified under a decree for a period of one year. In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Mistaken belief on support obligation considered in ruling on failure to provide support. While a divorced parent's support obligation is not legally suspended by the other parent's violation of the visitation provisions in a custody decree, a mistaken belief to this effect is a factual circumstance which the trial court may consider in ruling on the question of the failure to provide reasonable support without cause in a proceeding which involves the termination of a parent-child legal relationship. In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Because of the harshness of permanently terminating parental rights (now parent-child legal relationships), strict compliance with this section is required. Petition of T.C.H. v. J.M.S., 190 Colo. 246, 545 P.2d 1357 (1976); In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Substantial compliance with the statutory provisions is essential and must appear of record. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Burden of statutory adoption is same on all citizens. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

Exclusive method of adoption. Except in a very limited and unique situation, the only method of legal adoption under the laws of Colorado is pursuant to the Colorado Children's Code. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

A juvenile court has exclusive jurisdiction in adoption proceedings, but such jurisdiction does not extend to ousting a district court of jurisdiction in habeas corpus proceedings involving the unlawful restraint of an infant. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

But court cannot determine custody apart from adoption. In adoption proceedings, where for lack of jurisdiction or failure to meet statutory requirements, the effort to adopt fails, a juvenile court has no power to make an award of custody, nor to determine the relative rights of natural parents or of persons seeking to adopt a child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Parent's abandonment of child is question of intent. Lack of mental capacity may be cause for failure to provide support and the presumption that an insanity adjudication results in the continuation of a state of mental incapacity applies in a proceeding under this section. Petition of D.L.M., 703 P.2d 1330 (Colo. App. 1985).

Adoption and abandonment proceedings distinguished. The question of abandonment is one of the elements involved in adoption proceedings, but that does not change adoption proceedings under this article to an abandonment proceeding under § 19-1-104. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

An adjudication in a habeas corpus proceeding involving custody of a minor child is not an adjudication of abandonment as defined in the adoption statute, nor as used in the dependent and neglected child statute since a district court has no jurisdiction in abandonment proceeding. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Section may not be supplemented or supplanted by action in dependency. This section provides within itself sufficient means and authority to accomplish its purpose, and it may not be supplemented or supplanted by an action in dependency. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A petition in dependency may not be converted into a proceeding for stepparent adoption by the actions either of the parties, the referee, or the trial court. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

And procedures are not interchangeable. Since a petition in dependency concerns different matters and fulfills a different purpose than a proceeding for a stepparent adoption, procedures applicable to one may not be used to accomplish the ends of the other. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

For the distinction between notice required by § 19-3-103 and that required by this section, see People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Colorado courts have not recognized cultural adoption as being legal adoption. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

Equitable adoption for purposes of intestacy. Where there is "an oral contract to adopt a child, fully performed except that there was no statutory adoption", the child could be held equitably adopted for purposes of intestacy. The court has never applied the doctrine to factual situations other than those involving succession to an estate. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

Trial court's findings supported by evidence binding on appeal. Where the record contains evidence which supports the findings of the trial court that it is not in the best interest of the child to proceed with adoption, those find-

ings are binding on appeal. In re J.A.A. v. C.R., 618 P.2d 742 (Colo. App. 1980).

Exclusion of expert witness testimony given the conflicting evidence was reversible error in kinship adoption case. Court must first determine whether terminating the parent-child legal relationship is in the best interests of the child before determining whether the child is available for adoption due to the parent's failure to provide reasonable support or abandonment. Social worker's excluded testimony did not relate to parent's failure to pay child support, but concerned threshold issue of whether termination was in the best interests of the child. In re C.A.B.L., 221 P.3d 433 (Colo. App. 2009).

Magistrate in kinship adoption proceeding may not take judicial notice of guardian ad litem's report in mother's dissolution case because report contains facts relating to the issues being litigated and mother has no opportunity to cross-examine guardian ad litem. However, the court may take judicial notice of its own records and adopt factual findings from a previous case involving the same parties and the same issues. In re C.A.B.L., 221 P.3d 433 (Colo. App. 2009).

Applied in Bd. of Control of State Home v. Mulertz, 60 Colo. 468, 154 P. 742 (1916); People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

II. CONSENT AND AVAILABILITY WITHOUT CONSENT.

Law reviews. For note, "A Compilation of Consent Provisions of Adoption Statutes", see 24 Rocky Mt. L. Rev. 359 (1952). For comment on White v. Davis (163 Colo. 122, 428 P.2d 909 (1967)), see 40 U. Colo. L. Rev. 151 (1967).

This section applies simply to consent and not to waiver, and, in view of the expressed intent of the general assembly to give the natural parents protection from hurried and coerced decisions to give up their child, the meaning of this section cannot be extended to include waiver of notice. Thus, the notice required may not be waived by a minor parent. Foley v. Carnesi, 123 Colo. 533, 232 P.2d 186 (1951).

General assembly has wide discretion in determining when and under what conditions child may be adopted without consent of natural parents. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973).

Parent has no absolute right to child under any and all circumstances. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973).

The determination that a child is "available for adoption" is only a preliminary step toward the replacement of the child's natural parent with one who appears to be more willing and able to provide the care, support, and training necessary for the child's proper development. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Objecting parent must show willingness to assume obligations. While a natural parent's rights may not be disregarded, expressed public policy declares that a parent seeking to prevent the adoption of his natural child by a stepparent may not stand upon his parental rights without demonstrating a willingness to assume parental obligations. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Failure to support and abandonment separate grounds. The Colorado Children's Code specifies that failure to support without cause is a separate and independent ground from that of abandonment for declaring a child available for adoption so that if sufficient proof on either or both grounds is submitted to the court, a judgment based thereon will not be disturbed. Karkanen v. Valdesuso, 33 Colo. App. 47, 515 P.2d 128 (1973).

This section does not require that abandonment and nonsupport must both be shown to terminate parental rights (now parent-child legal relationship). Buder v. Reynolds, 175 Colo. 28, 486 P.2d 432 (1971).

Prior court order mandating child support is not a prerequisite to a finding that a natural parent has failed without cause to provide child support. Accordingly, a child could be adopted without the natural father's consent where the natural father had failed to provide any child support for over a year preceding the filing for stepparent adoption, the evidence suggested that he would not pay child support in the future, and all procedural requirements of this section had been met. In re I.R.D., 971 P.2d 702 (Colo. App. 1998).

In assessing whether a parent has abandoned a child, the court must examine the totality of the circumstances viewed in light of the best interests of the child, and mother's single phone call made during the year prior to the filing of the petition for adoption would not preclude a finding of abandonment. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Termination of parental rights (now parent-child legal relationship) constitutional. Requiring only a showing that the natural parent has failed without cause to provide reasonable support for a child for one year or more, when termination of a natural parent's rights is sought in a stepparent adoption, does not violate the natural parent's constitutional rights. Buder v. Reynolds, 175 Colo. 28, 486 P.2d 432 (1971).

Consent is necessary in all adoptions, since without valid consents courts are without jurisdiction to enter decrees of adoption. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Minor parent may give consent. Under this section, the minority of a natural parent is not a

bar to such parent's consent to adoption. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

A mother's consent to the adoption is necessary unless she has forfeited her rights. Graham v. Francis, 83 Colo. 346, 265 P. 690 (1928).

When the petition in adoption was filed, there was no valid order of dependency. Without such a valid order the consent of the mother was essential, and not being filed with that petition, the court was without jurisdiction to enter the decree of adoption, and its jurisdiction was no greater because of the subsequent order of dependency based on a new petition. The adjudication of dependency entered subsequent to the filing of the petition in adoption could not give vitality to the adoption petition. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955).

Unverified consent ineffective. Where the written consent of the natural parent is not subscribed and sworn to as required by this section, a decree of adoption will not be sustained. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Consent valid in absence of fraud, coercion, or misrepresentation. A mother may not avoid the consequences of her voluntary acts in consenting to the adoption of her children, on the ground that she did not realize the seriousness and finality of the paper she was signing, in the absence of fraud, coercion, or misrepresentation. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Consent required where divorce decree specifically relieved father of duty to support child. T.C.H. v. J.M.S., 190 Colo. 246, 545 P.2d 1357 (1976).

After relinquishment, parental consent unnecessary. If there has been a relinquishment, then in proceedings for the adoption of the relinquished child, the agency to which the child has been relinquished is the only one that can consent. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Consent is not required where the parent has abandoned the child. Neville v. Bracher, 94 Colo. 550, 31 P.2d 911 (1934).

And such parent not entitled to notice of adoption. Where the mother abandons and deserts her child, she has no right to receive notice of the child's adoption. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Notice of adoption proceedings under this section need not be given where a valid relinquishment has been made, such relinquishment divesting the natural parents of all legal right in their child. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Under this section, no notice of an adoption proceeding is required to be given parents who have relinquished or lost their rights to the custody of their children by prior court action. Olsen v. Davidson, 142 Colo. 205, 350 P.2d 338 (1960).

Hearing on adequacy of notice required. Where the motion to vacate the adoption decrees claims no notice whatsoever and further alleges that in support of an order authorizing service by publication the procurer of the order made a false representation that he was unaware of the whereabouts of the natural father, the inherent seriousness of such allegations require an evidentiary hearing to determine whether the due process requirements in the adoption proceedings were met. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967) (decided under former § 4-1-16, C.R.S. 1963).

19-5-204. Venue. A petition for adoption shall be filed in the county of residence of the petitioner or in the county in which the placement agency is located.

Source: L. 87: Entire title R&RE, p. 806, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-205. Adoption decree of foreign country approved. (1) (a) A petition seeking a decree declaring valid an adoption granted by a court of any country other than the United States of America may be filed at any time by residents of the state of Colorado.

(b) The petition shall contain all information required in section 19-5-207 (2); except that the court shall not require the petition to contain or be accompanied by the written consent described in section 19-5-207 (1), the written home study report described in section 19-5-207 (2) (a), the fees described in section 19-5-207.5 (4), or a written legal memorandum with specific references to the applicable law of the foreign country.

(2) The court shall issue a decree declaring valid an adoption granted by a court of competent jurisdiction or other authorized individual or entity of a country other than the United States of America upon a finding that:

(a) At the time the petition is filed, the petition contains a verified statement that at least one of the adopting parents is a citizen and resident of the state of Colorado or other

evidence that at least one of the adopting parents is a citizen and resident of the state of Colorado;

(b) The original or a certified copy of a valid foreign adoption decree, together with a notarized translation, is presented to the court; and

(c) The child is either a permanent resident or a naturalized citizen of the United States. A photocopy of the child's resident alien card issued by the immigration and naturalization service of the United States, department of justice, or any successor agency, shall be sufficient evidence that the child is either a permanent resident or a naturalized citizen of the United States.

(2.5) The adopting parties filing a petition pursuant to this section shall not be required to be represented by an attorney.

(3) Any decree issued pursuant to this section shall have the same legal effect as any decree of adoption issued by the court.

Source: L. 87: Entire title R&RE, p. 806, § 1, effective October 1. **L. 97:** (1)(b) and (2) amended and (2.5) added, p. 1162, § 5, effective July 1. **L. 99:** (1)(b) amended, p. 1024, § 5, effective May 29. **L. 2011:** (2)(c) amended, (HB 11-1303), ch. 264, p. 1158, § 39, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-107.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Lawful Permanent Residence and Citizenship for the Adopted Foreign Child", see 15 Colo. Law. 2207 (1986).

19-5-205.5. Nonpublic agency interstate and foreign adoptions - legislative declaration - authority for department to select agencies. (1) The general assembly finds that timely processing of adoptions is in the best interests of the children being adopted. It is therefore the intent of the general assembly to expedite permanency for those children who are being adopted. It is the purpose of this section to promote timely processing of nonpublic agency interstate and foreign adoptions while increasing the department of human services' capacity to utilize existing staff to perform other child welfare functions.

(2) (a) The department is authorized to select nonpublic, licensed child placement agencies authorized to handle adoptions or nonpublic agencies that meet the qualifying criteria to be licensed child placement agencies pursuant to article 6 of title 26, C.R.S., and any implementing rules or regulations promulgated by the department for the provision of services to individuals seeking assistance in nonpublic agency interstate or foreign adoption cases pursuant to this part 2. The department shall, by rule, establish qualifying criteria by which such nonpublic agencies shall be selected for this purpose.

(b) The department shall further promulgate rules creating standards by which the department may evaluate the delivery of services by the selected nonpublic agencies and identifying the services and functions to be rendered by the nonpublic agencies selected pursuant to paragraph (a) of this subsection (2) including, but not limited to, the following:

(I) The review of all background information concerning the birth parents and individual case material on the adopting family's assessment;

(II) The review of all legal documents related to the relinquishment or termination of the birth parents' rights;

(III) The review of all birth and medical information;

(IV) The review of correspondence with the immigration and naturalization service in the United States, department of justice, or any successor agency, in foreign adoptions;

(V) The review of the child's social history, legal documents, medical information, and birth certificate in foreign adoption cases in which the child is to be placed in Colorado;

(VI) The provision of relinquishment counseling;

(VII) The promotion of permanent plans for the adopted child;

(VIII) The agency's compliance with federal and Colorado laws, including, but not limited to, the "Interstate Compact on Placement of Children" as set forth in part 18 of article 60 of title 24, C.R.S.;

(IX) The timeliness of the provision of services; and

(X) The overall protection of the child being adopted.

(3) (a) Nonpublic agencies may charge reasonable and necessary fees and costs to defray the direct and indirect expenses associated with the provision of nonpublic agency interstate and foreign adoption services associated with the statutorily required review and approval of interstate and foreign adoptive placements. Pursuant to section 19-5-208 (4), all fees and costs charged for services associated with the review and approval of interstate and foreign adoptions shall be separately specified in the expenses listed for the court's review as required.

(b) The department of human services shall, by rule, establish guidelines for the fees and costs which such nonpublic agencies selected pursuant to subsection (2) of this section may charge for the delivery of such services.

(4) All interstate and foreign adoptions in Colorado made by the court, the county departments of social services, or licensed child placement agencies shall be pursuant to section 19-5-206 (1).

(5) For purposes of this section, "nonpublic agency interstate and foreign adoption" is defined in section 19-1-103 (81).

Source: L. 94: Entire section added, p. 1200, § 1, effective July 1. **L. 96:** (4) amended, p. 84, § 10, effective March 20. **L. 97:** (2)(a), IP(2)(b), and (2)(b)(I) amended and (5) added, p. 1162, § 6, effective July 1. **L. 2011:** (2)(b)(IV) amended, (HB 11-1303), ch. 264, p. 1159, § 40, effective August 10.

19-5-206. Placement for purposes of adoption. (1) No placement of any child legally available for adoption under section 19-5-203 (1) (a), (1) (b), (1) (c), or (1) (g) shall be made for the purposes of adoption except by the court pursuant to section 19-5-104 (2), the county department of social services, or a licensed child placement agency.

(2) (a) In child welfare cases, a child's best interests shall be the primary consideration for a court, county department, or licensed child placement agency in making determinations concerning the placement of the child for the purpose of adoption.

(b) (Deleted by amendment, L. 2010, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26, 2010.)

(c) An agency that has responsibility for placing children out of the home shall use good faith efforts and due diligence to recruit and retain prospective foster and adoptive families from communities that reflect the racial, ethnic, cultural, and linguistic backgrounds of the children in the agency's care.

(d) In making determinations concerning the placement of a child for the purpose of adoption, a court, county department, or licensed child placement agency may, under extraordinary circumstances, consider the racial or ethnic background, color, or national origin of:

(I) The child; or

(II) A family who has submitted an application to adopt.

(e) A court, county department, or licensed child placement agency shall not delay a foster or adoptive placement of a child as a result of the racial or ethnic background, color, or national origin of:

(I) The child; or

(II) A family who has submitted an application to foster or adopt a child.

(f) In private adoption cases, a birth parent or birth parents may designate a specific applicant with whom they may wish to place their child for purposes of adoption. After assessment and approval of the potential adoptive parents and subsequent relinquishment of the child, the court shall grant guardianship of the child to a person or agency described in section 19-5-104 (1) until finalization of adoptive placement.

(g) The court may waive the assessment and approval of the potential adoptive parents in cases involving kinship or custodial adoption or may determine and order the kind of information or written report it deems necessary for the assessment and approval of the potential adoptive parents, including an abbreviated home study or home evaluation. The court may proceed to finalize such adoptive placement upon finding that the placement is in the best interests of the child.

(3) (Deleted by amendment, L. 2010, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26, 2010.)

Source: L. 87: Entire title R&RE, p. 807, § 1, effective October 1. **L. 89:** (2) amended, p. 938, § 2, effective March 21. **L. 94:** (2) amended, p. 71, § 1, effective March 15; (3) added, p. 673, § 2, effective July 1. **L. 99:** (2) amended, p. 1063, § 4, effective June 1. **L. 2010:** (2) and (3) amended, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "Substantive Changes in Adoption and Relinquishment Law in Colorado", see 16 Colo. Law. 2183 (1987).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Welfare departments and placement agencies not solely authorized to place adoptive children. Inasmuch as the general assembly has granted the court exclusive jurisdiction over adoptions, has expressly authorized adoptive placement, and has given the court the final and sole responsibility of approving or disapproving adoptions, it would be totally inconsistent to conclude that the welfare department or licensed placement agencies are the sole entities authorized to place a child for adoption following termination of parental rights. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

19-5-207. Written consent and home study report for public adoptions - criminal history records check - investigation. (1) When a child is placed for adoption by the county department of social services, a licensed child placement agency, or an individual, such department, agency, or individual shall file, with the petition to adopt, its written and verified consent to such adoption in addition to any notices received or sent pursuant to the terms of the "Interstate Compact on Placement of Children" set forth in part 18 of article 60 of title 24, C.R.S.

(2) In all petitions for adoption, whether by the court, the county department of social services, or child placement agencies, in addition to such written consent, the court shall require a written home study report from the county department of social services, the designated qualified individual, or the child placement agency approved by the state department of human services pursuant to section 19-5-207.5 (2) showing the following:

(a) The physical and mental health, emotional stability, and moral integrity of the petitioner and the ability of the petitioner to promote the welfare of the child; but no physical examination shall be required of any person who in good faith relies upon spiritual means or prayer in the free exercise of religion to prevent or cure disease unless there is reason to believe such person's physical condition is such that he or she would be unable to take care of such child;

(b) Confirmation that the petitioner has participated in adoption counseling if the court deems appropriate. The counseling may address the permanence of the decision, the impact of the decision on the adopting parent and the adopting parent's family now and in the future, and the issues that may arise in the event that the adoptee at some time in the future desires to contact the relinquishing parent.

(c) The physical and mental condition of the child;

(d) The child's family background, including the names of parents and other identifying data regarding the parents, if obtainable;

(e) Reasons for the termination of the parent-child legal relationship;

(f) The suitability of the adoption of this child by this petitioner and the child's own disposition toward the adoption in any case in which the child's age makes this feasible; and

(g) The length of time the child has been in the care and custody of the petitioner.

(2.5) (a) (I) In all petitions for adoption, whether by the court, the county department of social services, or child placement agencies, in addition to the written home study report described in subsection (2) of this section, the court shall require the county department of social services, the designated qualified individual, or the child placement agency to conduct a criminal history records check for any prospective adoptive parent or any adult residing in the home.

(II) For purposes of fulfilling the criminal history records check required in subparagraph (I) of this paragraph (a), the state board of human services shall promulgate rules concerning petitions for adoption when a child is placed for adoption by the county department of social services or a child placement agency to require each prospective adoptive parent attempting to adopt a child placed for adoption by the county department of social services or a child placement agency to obtain fingerprint-based criminal history record checks through the Colorado bureau of investigation and the federal bureau of investigation. The prospective adoptive parent to whom this subparagraph (II) applies shall be responsible for the cost of the criminal history record checks.

(III) For purposes of fulfilling the criminal history records check required in subparagraph (I) of this paragraph (a), a prospective adoptive parent, other than a prospective adoptive parent specified in subparagraph (II) of this paragraph (a), shall obtain fingerprint-based criminal history record checks through the Colorado bureau of investigation and the federal bureau of investigation. A prospective adoptive parent to whom this subparagraph (III) applies shall be responsible for providing a complete set of fingerprints to the Colorado bureau of investigation and for obtaining the fingerprint-based criminal history record checks. The prospective adoptive parent shall also be responsible for the cost of the criminal history record checks.

(IV) A prospective adoptive parent described in subparagraph (III) of this paragraph (a) shall be responsible for presenting the results of his or her fingerprint-based criminal history record checks and the results of the fingerprint-based criminal history records checks of any adult residing in the home to the court for review by the court. The county department of social services or the child placement agency, as may be appropriate, shall report to the court any case in which a fingerprint-based criminal history record check reveals that the prospective adoptive parent who is attempting to adopt a child placed for adoption by a county department of social services or child placement agency or any adult residing in the home was convicted at any time of a felony or misdemeanor in one of the following areas:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Any crime against a child, including but not limited to child pornography;

(D) Any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(E) Violation of a protection order, as described in section 18-6-803.5, C.R.S.;

(F) Any crime involving violence, rape, sexual assault, or homicide; or

(G) Any felony physical assault or battery conviction or felony drug-related conviction within, at a minimum, the past five years.

(a.5) (I) Notwithstanding the provisions of sub-subparagraph (B) of subparagraph (II) of paragraph (b) of this subsection (2.5), a licensed child placement agency or a county placement agency may conduct an investigation of a prospective adoptive parent's background only if the fingerprint-based criminal history records check required pursuant to paragraph (a) of this subsection (2.5) reveals that the prospective adoptive parent was convicted of a felony or misdemeanor at least ten years prior to the application for adoption.

(II) If a licensed child placement agency or a county placement agency conducts an investigation of the prospective adoptive parent, it shall have the opportunity to present its findings to the juvenile court responsible for reviewing the petition for adoption. The

licensed child placement agency or the county placement agency shall provide to the juvenile court responsible for reviewing the petition for adoption:

(A) A certified copy of any criminal court documentation substantiating the disposition of the applicant's felony criminal case; or

(B) Certified documentation that the court records concerning the felony case have been destroyed or are otherwise unavailable.

(III) Pending the results of the investigation by the licensed child placement agency or the county placement agency and the juvenile court's ruling on the eligibility of the applicant for the placement of a child, the child shall not be placed in the prospective adoptive parent's home if the fingerprint-based criminal history records check revealed that the prospective adoptive parent was convicted at any time of a felony or misdemeanor.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), a person convicted of a felony offense specified in subparagraph (IV) of paragraph (a) of this subsection (2.5) may be allowed to adopt a child if:

(A) The applicant has had no further arrests or convictions subsequent to the conviction;

(B) The applicant has not been convicted of a pattern of misdemeanors, as defined by rule of the state board of human services; and

(C) The court enters a finding consistent with section 19-5-210 (2) (d) that the adoption is in the best interests of the child.

(II) A person convicted of a felony offense as described in this subparagraph (II) shall not be allowed to adopt a child if there is:

(A) A felony conviction on the application for adoption that involves child abuse, as described in section 18-6-401, C.R.S.; a crime of violence, as defined in section 18-1.3-406, C.R.S.; or a felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(B) A felony conviction on the application for adoption that occurred less than five years prior to the application that involved physical assault or battery or a drug-related offense; or

(C) A felony conviction on the application for adoption that occurred less than ten years prior to the application and involved domestic violence, as defined in section 18-6-800.3, C.R.S.

(c) In addition to the fingerprint-based criminal history records check, the county department of social services, the individual, or the child placement agency conducting the investigation shall contact the state department of human services and the appropriate entity in each state in which the prospective adoptive parent or parents or any adult residing in the home has resided in the preceding five years to determine whether the prospective adoptive parent or parents or any adult residing in the home has been found to be responsible in a confirmed report of child abuse or neglect and shall report such information to the court. Information obtained from any state records or reports of child abuse or neglect shall not be used for any purpose other than completing the investigation for approval of the prospective adoptive parent.

(d) The state board of human services shall promulgate rules setting forth the procedures for the fingerprint-based criminal history record check and the report to the court described in paragraph (a) of this subsection (2.5).

(3) In proposed relative adoptions, the court shall review the report prepared pursuant to subsection (2) of this section. The court may order further assessment if the court deems it necessary.

(4) Any party to the adoption proceeding may be entitled to see the report required by subsection (2) of this section; except that the names of parents and adoptive parents and any means of identifying either shall not be made available except upon order of the court.

(5) to (7) (Deleted by amendment, L. 99, p. 1018, § 1, effective May 29, 1999.)

(8) If a court orders a county department of social services to counsel a birth parent concerning relinquishment of a child pursuant to the provisions of sections 19-5-103 and 19-5-104, the county department shall charge a fee to meet the full cost of the counseling.

(9) If the child is being placed in an adoptive home by a licensed child placement agency, such agency shall file an affidavit with the court stating that the agency's license is

in good standing with the department. A licensed child placement agency involved in an adoption proceeding pursuant to this article shall immediately notify the court in writing of any suspension, revocation, or denial of its license or of any disciplinary action taken against the agency by the state of Colorado. Failure of the agency to provide such notification shall be a class 3 misdemeanor punishable by a fine of five thousand dollars. The department shall, by rule, adopt a mechanism by which a child placement agency shall notify the court of any disciplinary action against the agency.

Source: L. 87: Entire title R&RE, p. 807, § 1, effective October 1. **L. 89:** (1) amended, p. 939, § 3, effective March 21. **L. 94:** (5) and (6) amended, p. 2688, § 212, effective July 1. **L. 97:** Entire section amended, p. 1163, § 8, effective July 1. **L. 98:** (2.5) added and (6) amended, p. 1423, §§ 10, 11, effective July 1. **L. 99:** IP(2), (2.5)(a), and (5) to (7) amended, p. 1018, § 1, effective May 29. **L. 2001:** (2.5) amended, p. 851, § 13, effective June 1. **L. 2003:** (2.5)(a) amended, p. 1016, § 29, effective July 1; (2.5)(a) amended, p. 1407, § 13, effective January 1, 2004. **L. 2005:** (2.5) amended, p. 584, § 1, effective May 26. **L. 2007:** (2.5)(b) amended and (2.5)(a.5) added, p. 693, § 1, effective May 3; (2.5)(a)(I), (2.5)(a)(IV)(C), and (2.5)(c) amended, p. 1019, § 10, effective May 22.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (2.5)(a) by House Bill 03-1117 and House Bill 03-1211 were harmonized.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (2.5), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2003 act amending subsection (2.5)(a), see section 1 of chapter 196, Session Laws of Colorado 2003.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Agency alone can consent after relinquishment. If there has been a relinquishment, then in proceedings for the adoption of the relinquished child, the agency to which the child has been relinquished is the only one that can consent. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Proof of abandonment does not assure adoption for the persons seeking to adopt. They may not qualify as adoptive parents because of lack of proof of financial ability, lack of moral qualities, or numerous other deficiencies. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

19-5-207.3. Placement of sibling groups. (1) When a child is placed for adoption by the county department, if the child is part of a sibling group, as defined in section 19-1-103 (98.5), the county department shall include in the adoption report prepared for the court, the names and current physical custody and location of any siblings of the child who are also available for adoption; except that the names of children, parents, caretakers, and adoptive parents and any means of identifying such persons shall not be made available to any party to the adoption proceeding except upon order of the court or as otherwise permitted by law.

(2) If the child is part of a sibling group, the county department shall make thorough efforts to locate a joint placement for all of the children in the sibling group who are available for adoption. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) If the child is part of a sibling group, as defined in section 19-1-103 (98.5), and is being placed for adoption by a child placement agency in either a circumstance involving

siblings who are the result of a multiple birth or a circumstance in which a parent has relinquished parental rights to the children to a child placement agency, the child placement agency shall make thorough efforts to locate a joint placement for all of the children in the sibling group who are available for adoption. If the child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. If an entire sibling group is not placed together in an adoptive placement, the child placement agency shall place as many siblings of the group together as possible, considering their relationship and the best interests of each child.

(4) Consideration of the placement of children together as a sibling group shall not delay the efforts for expedited permanency planning or permanency planning in order to achieve permanency for each child in the sibling group.

Source: L. 2000: Entire section added, p. 477, § 7, effective July 1. **L. 2003:** (2) and (3) amended, p. 2628, § 10, effective June 5.

19-5-207.5. Legislative declaration - standardized home studies - adoptive family resource registry - rules. (1) **Legislative declaration.** (a) (I) The general assembly hereby finds that there are a growing number of children in the legal custody of the county departments of social services who are the victims of physical or sexual abuse, neglect, or abandonment and who are awaiting permanent placement in safe, loving, and nurturing adoptive homes. The general assembly further finds that with the expedited permanency procedures that have been established and with the enactment of legislation implementing the federal "Adoption and Safe Families Act of 1997", Public Law 105-89, it is anticipated that the number of children available for adoption will continue to increase dramatically and that there will be a corresponding increased need to identify statewide those families that are willing and qualified to adopt these needy children.

(II) The general assembly finds that, although the county departments of social services have made admirable efforts in assessing and reporting on the qualifications of families interested in adopting, there is a need to make the valuable resource of such qualified families more available and accessible to all counties in the state in order to satisfy the growing need for suitable adoptive families.

(b) Accordingly, the general assembly determines that it is appropriate and desirable for the department to aid the county departments of social services in their efforts to achieve permanency for children in their legal custody who are available for adoption by making accessible to such county departments a statewide adoptive family resource registry of families who are qualified for and desirous of adopting children with special needs. Toward that end, the general assembly further determines that it would be beneficial to such children and families for the department to develop an approved vendor list of qualified home study providers by region, standardized investigation criteria, and minimum uniform adoptive home study report standards in order to achieve more timely adoptive placements, to reduce the burden associated with the adoption process, and to avert the possibility of failed adoptions.

(2) **Approved vendor lists for home studies.** (a) In order to achieve greater access to qualified families seeking to adopt children, to expedite permanency placement for children available for adoption, and to obtain reliable, high-quality assessments of families that can result in permanent and healthy placements, the department shall develop an approved vendor list of county departments, individuals, and child placement agencies qualified to prepare the home study reports in public adoptions as required by section 19-5-207 (2).

(b) (I) On or before January 1, 2000, the department shall issue a public request for applications from county departments of social services, individuals, and child placement agencies desirous of conducting investigations and preparing written home study reports for prospective public adoptions in specified counties or geographic regions. The department

shall review the applications it receives and shall determine which applicants meet the qualifying criteria identified by the state board of human services pursuant to subparagraph (II) of this paragraph (b). Each county department of social services, individual, or child placement agency that meets the qualifying criteria shall be placed on the approved vendor list of home study report providers.

(II) The state board of human services shall promulgate rules identifying the qualifying criteria that county departments of social services, individuals, and child placement agencies must meet in order to qualify as an approved vendor pursuant to this paragraph (b) for the purpose of conducting adoptive investigations and preparing home study reports. All county departments of social services, qualified individuals, and child placement agencies that submit applications to the department and that meet the qualifying criteria shall be selected to perform home studies and, once such county departments, individuals, or agencies have been approved by the department pursuant to this paragraph (b), they shall be available to perform home studies in the specified county or region.

(c) All qualified county departments of social services, individuals, and child placement agencies approved by the department to conduct home studies pursuant to paragraph (b) of this subsection (2) shall prepare their home study reports in compliance with the minimum uniform standards prescribed by rule of the state board as described in subsection (3) of this section and any other additional criteria and standards established by a particular county pursuant to paragraph (b) of subsection (3) of this section.

(d) Each qualified county department of social services, individual, or child placement agency approved by the department may promote the adoption of available children through a public information campaign directed at educating and informing the public about the need for safe and healthy adoptive families. Regional educational campaigns shall be encouraged.

(e) All qualified county departments of social services, individuals, and child placement agencies approved by the department pursuant to this subsection (2) may participate in the statewide training provided by the department.

(3) **Standards for home studies.** (a) The state board of human services shall promulgate rules identifying the criteria for the investigation and the minimum uniform standards for the home study reports with which the qualified county departments of social services, individuals, or child placement agencies approved by the department shall comply. The criteria shall include, but shall not be limited to:

(I) The quality standards that the county department of social services, the individual, or the child placement agency must achieve;

(II) The time frames within which the county department of social services, the individual, or the child placement agency must complete the investigations and home study reports; and

(III) The capacity of the county department of social services, the individual, or the child placement agency to assess the abilities of prospective adoptive families to meet the needs of a child with special needs.

(b) Nothing in this section shall prohibit a county department of social services from establishing additional criteria and standards that a county department of social services, an individual, or a child placement agency shall meet in preparing a home study report.

(4) **Fees for investigations and home studies.** (a) (I) Any person who, by his or her own request or by order of the court as provided in section 19-5-209, is the subject of a home study report and investigation conducted pursuant to section 19-5-207 by a county department of social services, an individual, or a child placement agency shall be required to pay, based on an ability to pay, the cost of such report and investigation.

(II) In public adoptions, the state board of human services shall promulgate rules establishing the maximum amount that a county department of social services, an individual, or a child placement agency may charge a prospective adoptive family for the investigation, criminal records check, and home study report required pursuant to section 19-5-207.

(III) The county department of social services may waive the fee established pursuant to this subsection (4) if the fee poses a barrier to the adoption of a child for whom a county department of social services has financial responsibility.

(b) (I) In addition to the fee specified in paragraph (a) of this subsection (4), if the county department of social services has not placed a child available for a public adoption with a family who is the subject of an investigation and home study report after six months, then the county shall refer the family and the home study report for such family to the adoptive family resource registry established pursuant to subsection (5) of this section if there is written consent pursuant to subparagraph (I) of paragraph (c) of subsection (5) of this section. Prior to referral of a prospective adoptive family to the adoptive family resource registry, the prospective adoptive family shall be assessed and shall pay a nonrefundable administrative fee in an amount to be determined by rule of the state board of human services. A family shall not be assessed the fee described in this paragraph (b) if the family is not referred to the adoptive family resource registry.

(II) The department or the contractor selected by the department to administer the adoptive family resource registry shall collect the administrative fee established by rule of the state board of human services pursuant to subparagraph (I) of this paragraph (b) and apply the revenue from said fees to offset the costs incurred for the administration of the adoptive family resource registry.

(III) Nothing in this paragraph (b) shall be construed to prevent a county from referring a family to the adoptive family resource registry before the six month period has lapsed.

(5) **Adoptive family resource registry.** (a) Subject to available funds as specified in subparagraph (III) of paragraph (b) of this subsection (5), the department shall establish a statewide adoptive family resource registry that county departments of social services may access to determine the availability of qualified families seeking to adopt a child in the custody of a county department of social services. The department is authorized to contract with a public or private entity for the provision of this service.

(b) (I) The executive director of the department is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of establishing the statewide adoptive family resource registry; except that no gift, grant, or donation shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(II) The executive director of the department is authorized to apply for a federal waiver, if necessary, to authorize the use of federal grant moneys to implement this section.

(III) No general fund moneys shall be expended for the establishment of the adoptive family resource registry. The adoptive family resource registry shall be established only upon the receipt of sufficient grants, gifts, and donations pursuant to subparagraph (I) of this paragraph (b).

(c) (I) No home study report, or any other information concerning a person interested in a public adoption shall be submitted to the adoptive family resource registry without such person's written consent.

(II) The state board of human services shall promulgate rules specifying the limited amount of nonidentifying data concerning a person interested in a public adoption that shall be available to county departments of social services on the internet through the adoptive family resource registry.

(III) The state board of human services shall promulgate rules identifying the standards and procedures with which the department or the contractor selected by the department to administer the adoptive family resource registry shall comply in order to preserve the confidentiality and privacy of the prospective adoptive family as much as possible.

Source: L. 99: Entire section added, p. 1019, § 2, effective May 29.

ANNOTATION

Law reviews. For article, "Achieving Safe, Permanent Homes for Colorado Children", see 31 Colo. Law. 37 (October 2002).

19-5-208. Petition for adoption. (1) The petition for adoption shall be filed not later than thirty-five days after the date on which the child is first placed in the home of the

adoptive applicants for the purpose of adoption unless the court finds that there was reasonable cause or excusable neglect for not filing the petition. The court shall then fix a date for the hearing.

(2) Every petition for adoption of a child shall be verified by the petitioner and shall be entitled substantially as follows: "In the matter of the petition of ..... for the adoption of a child." It shall contain:

(a) The name, date and place of birth, race, and place of residence of each petitioner, including the maiden name of the adopting mother, and the date of marriage, if any, of the petitioners;

(b) The name, date and place of birth, and place of residence, if known by the petitioner, of the child to be adopted;

(c) The relationship, if any, of the child to the petitioner;

(d) The full name by which the child shall be known after adoption;

(e) The full description of the property, if any, of the child;

(f) The names of the parents of the child, and the address of each living parent, if known to the petitioner;

(g) The names and addresses of the guardian of the person and the guardian of the estate of the child, if any have been appointed;

(h) The name of the agency or person to whom the custody of the child has been given by proper order of court;

(i) The length of time the child has been in the care and custody of the petitioner;

(j) Names of other children, both natural and adopted and both living and dead, of the adopting parents;

(k) The residence and occupation of each petitioner at or about the time of the birth of the child.

(2.5) (a) Pursuant to the provisions of section 19-1-126, the petition for adoption shall:

(I) Include a statement indicating what continuing inquiries the county department of social services or child placement agency has made in determining whether the child who is the subject of the proceeding is an Indian child;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts, or copies thereof, shall be attached to the petition for adoption and filed with the court or filed within ten days after the filing of the petition for adoption, as specified in section 19-1-126 (1) (c).

(3) If the adoption placement is made by the county department of social services or a child placement agency, the information required in paragraphs (b) and (f) of subsection (2) of this section shall not be included in the petition but shall be transmitted to the court as part of the home study report required in section 19-5-207.

(4) The petition shall be accompanied by a standardized affidavit form prescribed by the judicial department disclosing any and all fees, costs, or expenses charged or to be charged by any person or agency in connection with the adoption.

(5) In all stepparent, second parent, custodial, and kinship adoptions, the petition shall contain a statement informing the court whether the prospective adoptive parent was convicted at any time by a court of competent jurisdiction of a felony or misdemeanor in one of the following areas: Child abuse or neglect; spousal abuse; any crime against a child; any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.; violation of a protection order, as described in section 18-6-803.5, C.R.S.; any crime involving violence, rape, sexual assault, or homicide; or any felony physical assault or battery. In addition, the petitioner shall attach to the petition a current criminal history records check paid for by the petitioner.

(6) In all custodial and kinship adoptions, the petition shall contain a statement that the petitioner has consulted with the appropriate local county department of social services concerning the possible eligibility of the petitioner and the child for temporary assistance

for needy families (TANF), medicaid, subsidized adoption and other services or public assistance administered by the county department of social services.

Source: L. 87: Entire title R&RE, p. 808, § 1, effective October 1. **L. 97:** (4) amended, p. 1165, § 9, effective July 1. **L. 99:** (3) amended, p. 1025, § 8, effective May 29; (5) and (6) added, p. 1063, § 5, effective June 1. **L. 2002:** (2.5) added, p. 788, § 9, effective May 30. **L. 2004:** (5) amended, p. 328, § 1, effective July 1. **L. 2007:** (5) amended, p. 838, § 2, effective August 3. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 880, § 141, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (2.5), see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1957 (1983). For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (November 2002).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Trial court may reduce claimed attorney fees when they are excessive. People in Matter of K.M.K., 780 P.2d 43 (Colo. App. 1989).

The status of the record at the time the petition for adoption is filed determines the steps to be taken, the consents required, and the persons to be served with citation or notice. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955) (decided under former CSA, C. 4, § 11).

19-5-209. Petition - written home study reports. (1) Except for stepparent adoptions, kinship adoptions, custodial adoptions, and those cases in which placement for adoption has been made by the court, if a petition for the adoption of a child is not accompanied by the written consent and home study report of the qualified county department of social services, individual, or a licensed child placement agency approved by the state department of human services pursuant to section 19-5-207.5 (2), the court shall order the county department of social services, individual, or licensed child placement agency to make an investigation and file a written home study report substantially in the form outlined in section 19-5-207 (2), including a recommendation as to whether the adoption should be decreed.

(2) In adoptions where a child placement agency or county department has legal guardianship during the interval between initial placement and the final order of adoption, the child placement agency or county department shall supervise the placement with prospective adoptive parents and the child. The court, after notice to all parties in interest and hearing thereon, may, for good cause, terminate said placement if, at any time prior to the final decree of adoption, it appears to the court that said adoption is not in the best interest of the child.

Source: L. 87: Entire title R&RE, p. 809, § 1, effective October 1. **L. 99:** (1) amended, p. 1023, § 3, effective May 29; (1) amended, p. 1064, § 6, effective June 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1) by House Bill 99-1218 and House Bill 99-1299 were harmonized.

ANNOTATION

Law reviews. For article, "Substantive Changes in Adoption and Relinquishment Law in Colorado", see 16 Colo. Law. 2183 (1987).

19-5-210. Hearing on petition. (1) A hearing on the petition for adoption shall be held on the date set or the date to which the matter has been regularly continued.

(1.5) Except in stepparent, second parent, custodial, or kinship adoptions, the court shall issue a certificate of approval of placement, placing the child's custodial care with prospective adoptive parents pending final hearing on the petition for adoption, if it appears to the court that the placement for adoption is in the best interest of the child.

(2) In stepparent, custodial, or kinship adoptions, the court shall hold a hearing on the petition as soon as possible. In all other adoptions, the court shall hold a hearing on the petition no sooner than one hundred eighty-two days after the date the child begins to live in the prospective adoptive parent's home, unless for good cause shown that time is extended or shortened by the court. At the hearing held on the petition, the court shall enter a decree setting forth its findings and grant to the petitioner a final decree of adoption if it is satisfied as to:

(a) The availability of the child for adoption;

(b) The good moral character, the ability to support and educate the child, and the suitableness of the home of the person adopting such child;

(b.5) The criminal records check of the prospective adoptive parent as reported to the court by the county department of social services or the child placement agency pursuant to section 19-5-207 (2.5) or the information provided to the court pursuant to section 19-5-208 (5) does not reveal a criminal history described in 19-5-207 (2.5) (a);

(c) The mental and physical condition of the child as a proper subject for adoption in said home;

(d) The fact that the best interests of the child will be served by the adoption; and

(e) If the child is part of a sibling group, whether it is in the best interests of the child to remain in an intact sibling group. If the county department or child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. The judge shall review the family services plan document regarding placement of siblings.

(3) The former name of the child shall not be stated in the final decree of adoption.

(4) If, after the hearing, the court is not satisfied as to the matters listed in subsection (2) of this section, the petition for adoption may be either continued or dismissed in the discretion of the court. The court shall not grant the decree of final adoption if it determines that the prospective adoptive parent was convicted at any time by a court of competent jurisdiction of a felony in one of the following areas: Child abuse or neglect; spousal abuse; any crime against a child; or any crime involving violence, rape, sexual assault, or homicide, excluding other physical assault or battery. For stepparent, kinship, or custodial adoptions, in addition to not granting a decree of final adoption in circumstances involving the felony convictions listed in this subsection (4), the court shall not grant the decree of final adoption if it determines that the prospective adoptive parent was convicted of a felony for physical assault or battery that was committed within the past five years.

(5) (a) Except as otherwise provided in paragraph (b) of this subsection (5), all hearings with reference to adoption shall be closed to the public and, in the discretion of the court, to any child who is the subject of adoption and who is under twelve years of age, but the court may interview the child whenever it deems it proper.

(b) Upon motion by any party to an adoption or upon the court's own motion, the court may order that an adoption hearing be opened to the public or to the child who is, or the children who are, the subject of the adoption if the court finds that opening the hearing is in the best interests of the child who is, or the children who are, the subject of the adoption hearing and the court finds that the potential adoptive parents have consented to an open hearing.

(6) In a stepparent adoption, in addition to issuing a final decree of adoption, the court shall enter an order terminating the other parent's parental rights. In a custodial or kinship adoption, in addition to issuing a final decree of adoption, the court shall enter an order terminating the parental rights of the child's parents.

(7) In cases involving the adoption of a child who is part of a sibling group, but who is not being adopted with his or her siblings, in addition to issuing a final decree of adoption, if the adoptive parents are willing, the court may encourage reasonable visitation among the siblings when visitation is in the best interests of the child or the children. The court shall review the record and inquire as to whether the adoptive parents have received counseling regarding children in sibling groups maintaining or developing ties with each other.

Source: L. 87: Entire title R&RE, p. 809, § 1, effective October 1. **L. 97:** IP(2) amended, p. 1165, § 10, effective July 1. **L. 98:** (2) and (4) amended, p. 1423, § 12, effective July 1. **L. 99:** Entire section amended, p. 1064, § 7, effective June 1. **L. 2000:** (2) amended and (7) added, p. 478, § 8, effective July 1. **L. 2003:** (2)(e) amended, p. 2628, § 11, effective June 5. **L. 2005:** IP(2) and (5) amended, p. 94, § 4, effective March 31. **L. 2007:** (1.5) amended, p. 838, § 3, effective August 3. **L. 2012:** IP(2) amended, (SB 12-175), ch. 208, p. 880, § 142, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (2) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Substantial compliance with statutory requirements necessary. These proceedings are statutory and as they affect substantial rights there must be a substantial compliance with the provisions of the legislative enactment. Such a compliance must appear of record and before acting on a petition in adoption the trial court should ascertain that the consents and notices necessary to confer jurisdiction were filed. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955) (decided under former CSA, C. 4, § 15).

Standard for determining custody, guardianship, and adoption is "best interests and welfare" of the child. People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Weight to be accorded to testimony and opinions of child psychiatrist and social worker is within sound discretion of the trier of fact. People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Concerns of unmarried parents who relinquished their rights are relevant to the court's consideration of placement with the grandparents. People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Trial court's findings supported by evidence binding on appeal. Where the record contains evidence which supports the findings of the trial court that it is not in the best interest of the child to proceed with adoption, those findings are binding on appeal. In re J.A.A. v. C.R., 618 P.2d 742 (Colo. App. 1980).

In determining whether termination and adoption would be in the best interests of the child, the court may consider, among other factors: Family stability; the present and future effects of adoption, including the detrimental

effects of termination; the child's emotional ties to and interaction with the parties; the child's adjustment to the living situation; the child's age; and the mental and physical health of the parties, and where trial court's factual determinations concerning these factors are supported by the evidence, they will not be disturbed. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

19-5-211. Legal effects of final decree. (1) After the entry of a final decree of adoption, the person adopted shall be, to all intents and purposes, the child of the petitioner. He shall be entitled to all the rights and privileges and be subject to all the obligations of a child born in lawful wedlock to the petitioner.

(1.5) An employer who permits paternity or maternity time off for biological parents following the birth of a child shall, upon request, make such time off available for individuals adopting a child. If the employer has established a policy providing time off for biological parents, that period of time shall be the minimum period of leave available for adoptive parents. Requests for additional leave due to the adoption of an ill child or a child with a disability shall be considered on the same basis as comparable cases of such complications accompanying the birth of such a child to an employee or employee's spouse. Any other benefits provided by the employer, such as job guarantee or pay, shall be available to both adoptive and biological parents on an equal basis. An employer shall not penalize an employee for exercising the rights provided by this subsection (1.5). The provisions of this subsection (1.5) shall not apply to an adoption by the spouse of a custodial parent or to a second-parent adoption.

(2) The parents shall be divested of all legal rights and obligations with respect to the child, and the adopted child shall be free from all legal obligations of obedience and maintenance with respect to the parents.

(2.5) The child shall be eligible for enrollment and coverage by any medical or dental insurance held by the prospective adoptive parents if, and on such a basis as, such coverage would be available to a child naturally born to the prospective adoptive parents.

(3) Nothing in this part 2 shall be construed to divest any natural parent or child of any legal right or obligation where the adopting parent is a stepparent and is married to said natural parent.

Source: L. 87: Entire title R&RE, p. 810, § 1, effective October 1. **L. 88:** (1.5) added, p. 759, § 1, effective April 13. **L. 93:** (1.5) amended, p. 1638, § 26, effective July 1. **L. 97:** (2.5) added, p. 1165, § 11, effective July 1. **L. 99:** (2) amended, p. 1065, § 8, effective June 1. **L. 2007:** (1.5) amended, p. 838, § 4, effective August 3.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

I. General Consideration.

II. Inheritability of Adopted Child.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For case comment, "Adoptive Sibling Marriage in Colorado: Israel v. Allen (195 Colo. 263, 577 P.2d 762 (1978))", see 51 U. Colo. L. Rev. 135 (1979). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Purpose of section. The legislative intent is to make the law affecting adopted children in respect to equality of inheritance and parental duties in pari materia with that affecting natural children. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

The general assembly intended to give an adopted child the legal status of a lineal descendant of the adopting parent or parents, and a child by adoption has the same legal status as a natural child. People ex rel. Dunbar v. White,

144 Colo. 212, 355 P.2d 963 (1960); Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961); People v. Estate of Murphy, 29 Colo. App. 195, 481 P.2d 420 (1971).

In passing the adoption statutes, the general assembly intended to place the adopted child in the family in the same position as a natural child. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

Section liberally construed. While courts were formerly inclined to regard adoption statutes as in derogation of the common law and therefore to be strictly construed, the humanitarian purposes of such statutes came to be recognized, and courts afford them a more liberal construction. Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

Definition of adoption. Adoption has been defined as the act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature. Graham v. Francis, 83 Colo. 346, 265 P. 690 (1928).

Adoption, in legal contemplation, is an act by which the parties thereto establish the relationship of parent and child between persons not so related by nature, and which, in many respects, severs the natural relations existing between the child and its parents, although in a narrower sense it is restricted to the act of the person taking the child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Change of custody follows from valid adoption decree. One of the legal effects of an adoption is to divest the natural parents of their custodial rights and to grant such rights to the adoptive parents. This change of custody follows as a natural consequence of a valid adoption decree. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

The contesting natural parent is by a decree of adoption divested of all parental rights and obligations. Clerkin v. Geisendorfer, 137 Colo. 139, 323 P.2d 633 (1958).

The adoption statute deprives the natural parents of their rights and obligations to their natural children after adoption. People v. Estate of Murphy, 29 Colo. App. 195, 481 P.2d 420 (1971).

After decree of adoption, natural parents are under no legal obligation to support child. Truitt v. Indus. Comm'n, 31 Colo. App. 166, 499 P.2d 621 (1972).

General rule as reflected in this section is that an adoption decree terminates the parental rights and duties of child's natural parents and grants those rights and duties to adoptive parents. Singular exception to general rule as set forth in section applies only in cases when adopting parent is married to natural parent. Thus, express statements of limitation must be read to exclude from adoption statute's reach all other possible exceptions not listed. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996).

A stepparent adoption proceeding, like all other adoption proceedings, is concluded by a final decree of adoption. It is only when the final decree is entered that a natural parent is divested of all rights and obligations with respect to the child. People in Interest of S.M.O., 931 P.2d 572 (Colo. App. 1996).

Husband's obligation to his adopted children rests upon him in no different way than if the children were of his own blood. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

Parent was not divested of child support obligation based on payments that accrued prior to a final adoption decree. In addition, father was denied equitable relief from child support obligation where record did not reflect evidence of representations upon which the father relied or that an evidentiary hearing was requested. In re Murray, 790 P.2d 868 (Colo. App. 1989).

II. INHERITABILITY OF ADOPTED CHILD.

Law reviews. For note, "The Right of Inheritance of Adopted Children in Colorado", see 23 Rocky Mt. L. Rev. 191 (1950). For note, "Adoption and Intestacy in Colorado", see 26 Rocky Mt. L. Rev. 65 (1953).

Inheritance is a statutory and not a vested right. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

A legally adopted child is to all intents and purposes the child and legal heir of the person so adopting him or her, entitled to all the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock; but upon the decease of such person and the subsequent decease of such adopted child without issue, the property of such adopting parent shall descend to his or her next of kin, and not to the next of kin of such adopted child. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

This section clearly declares a child by adoption to have the same legal status as a natural child born to the adopting parent or parents. People ex rel. Dunbar v. White, 144 Colo. 212, 355 P.2d 963 (1960); Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

After adoption the adopted child becomes the heir of his adoptive parents as though born to them in lawful wedlock, and his natural parents are cut off and neither they nor their lineage may inherit from the adopted child. As to his adoptive parents, the child becomes subject to all rights and obligations of a child born in lawful wedlock. The relation thus established can be nothing less than that of parent and child. To say that such status is less or different from the parent and child relationship would do violence to the clear legislative intent to create unity in the family. Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

Section confers ordinary rights of inheritance. The laws permitting the adoption of children confer on them simply the ordinary rights of inheritance. In re Schmidt's Will, 85 Colo. 28, 273 P. 21 (1928).

Legally adopted children are entitled to inherit as fully as children of the foster parents begotten in lawful wedlock. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

It does not affect the power of the adoptive parent to dispose of his property by will, but the adoptive parent may deprive himself of the power thus to dispose of his property by a contract binding him to give the adopted child a certain share of his property. In re Schmidt's Will, 85 Colo. 28, 273 P. 21 (1928).

A testator cannot by will disinherit an adopted child contrary to the specific prohibition of the decree of adoption. Neville v. Bracher, 94 Colo. 550, 31 P.2d 911 (1934).

An agreement not to disinherit is supported by the consideration of the acquirement by the adoptive parents of the child's love and affection, her filial obligations to them, a change in domestic relationship, the consent of the surviving natural parent to forever relinquish his paternal rights, and the child's forfeiture of her rights which she enjoyed before the adoption proceedings. In re Schmidt's Will, 85 Colo. 28, 273 P. 21 (1928).

The right of inheritance conferred by statute is a reciprocal one, because it depends upon a relation that is created by the adoption under our statute. The adopted child inherits from the adoptive parent. The relation of parent and child having been thus created, the right of the adoptive parent to inherit is the same as was or would have been that of the natural parent. Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

Adoption decree which incorporated statutory language similar to language in this section terminated only the adopted child's obligations to her natural father but not her right to inherit from him; therefore, the child was the heir of her intestate natural father regardless of the validity of her adoption. Matter of Estate of Bomareto, 757 P.2d 1135 (Colo. App. 1988).

A twice adopted child cannot inherit from his first adoptive parents unless such parents have died prior to the second adoption or unless he is readopted by his own natural parents where there is a second adoption by strangers. A child cannot logically be the adopted child of more than one set of adoptive parents at a time. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

19-5-212. Copies of order of adoption - to whom given. (1) If the court enters an order of adoption, certified copies shall be given to the adopting parents, the person or agency consenting to the adoption, and the state registrar.

(2) The court or the adopting parents or their legal representative shall send to the state registrar an application for a birth certificate, signed by the adoptive parents. The state registrar shall thereupon issue a new birth certificate to the child, as provided in section 25-2-113, C.R.S.

(3) If the child was born outside of Colorado, copies of the order of adoption and application for birth certificate shall be sent to the state registrar of the state of birth and to the registrar of vital statistics in this state. If the application for a birth certificate is denied by the state registrar in the state of birth, the adopting parents may return to the registrar in this state and apply to him to issue a new certificate of birth. The state registrar shall issue a birth certificate upon satisfactory evidence that the adopting parents, after good-faith effort, were unable to obtain a new certificate of birth from the state of birth.

Source: L. 87: Entire title R&RE, p. 810, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

19-5-213. Compensation for placing child prohibited. (1) (a) No person shall offer, give, charge, or receive any money or other consideration or thing of value in connection with the relinquishment and adoption, except attorney fees and such other

charges and fees as may be approved by the court.

(b) No person, other than an adoption exchange whose membership includes county departments and child placement agencies, a licensed child placement agency, or a county department, shall offer, give, charge, or receive any money or other consideration or thing of value in connection with locating or identifying for purposes of adoption any child, natural parent, expectant natural parent, or prospective adoptive parent; except that physicians and attorneys may charge reasonable fees for professional services customarily performed by such persons.

(c) A child who is placed by a county department in a foster care home operated by a child placement agency shall be deemed, for purposes of payment to the child placement agency, to remain in foster care status for purposes of payment of consideration to the child placement agency until the date that the final decree of adoption is entered or until the date that the child is returned to his or her biological parent's home, unless otherwise negotiated in the contract between the child placement agency and the county department.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for ninety days in the county jail, or by both such fine and imprisonment.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 2005:** (1) amended, p. 970, § 4, effective June 2.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law, 1057 (1983).

Trial court may reduce claimed attorney fees when they are excessive. People in Matter of K.M.K., 780 P.2d 43 (Colo. App. 1989).

19-5-214. Limitation on annulment of adoption - best interests standard. (1) No final decree of adoption shall be attacked by reason of any jurisdictional or procedural defect after the expiration of ninety-one days following the entry of the final decree; except that, in cases of stepparent adoption, no final decree of adoption shall be attacked by reason of fraud upon the court or fraud upon a party, whether or not there is a jurisdictional or procedural defect, after the expiration of one year following the entry of the final decree of adoption.

(2) When a final decree of adoption is attacked on any basis at any time, the court shall consider the best interests of the child, taking into account the factors set forth in section 14-10-124, C.R.S. The court shall sustain the decree unless there is clear and convincing evidence that the decree is not in the best interests of the child.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 94:** Entire section amended, p. 752, § 5, effective April 20; entire section amended, p. 1198, § 2, effective May 19. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 880, § 143, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 94-1042 and Senate Bill 94-5 were harmonized.

(3) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For comment on White v. Davis (163 Colo. 122, 428 P.2d 909 (1967)), see 40 U. Colo. L. Rev. 151 (1967).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Purpose of section. This section serves the beneficial purpose of curing technical defects which do not affect the basic rights of the parties and guaranteeing to adopting parents the undisturbed relationship with the child, which was one of its legislative intents. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967).

Parties assuming the responsibilities of adoptive parents are entitled to assurance that upon adopting a child they are not also adopting a law suit. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Sufficiency of notice. Where a father was serving in the Navy and had notice of a dependency proceeding, his right to contest adoption decrees is barred by this section which limits the right to challenge a valid decree to two years after entry. Olsen v. Davidson, 142 Colo. 205, 350 P.2d 338 (1960).

Although the record reveals service by publication, where the adequacy or sufficiency of such notice was strongly challenged by motion to vacate which alleged that in support of an order authorizing service by publication the procurer of the order made a false representation that he was unaware of the whereabouts of the natural father, it was a proper matter for evidentiary hearing by the lower court to determine whether the due process requirements in the adoption proceedings were met. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967).

In termination of parental rights case, omission of the process server's verified signature is insufficient to cause prejudice to father's case where father acknowledged he received the notices and petitions. Allowing an amendment to cure the defect serves the best interests of the children. In re Petition of Taylor, 134 P.3d 579 (Colo. App. 2006).

Validity of consent. Where the record is devoid of any evidence of fraud, coercion, undue influence, misrepresentation, or misconduct on the part of the adopting parents or their attorney, and there is nothing to indicate that the mother was lacking in understanding as to the consequences of her consent to the adoption of her children, a finding by the trial court that at the time of signing the consent the mother did not realize the seriousness and finality of her act was insufficient to set aside the decrees of adoption. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

No inherent right exists to rescind an adoption. When there is no provision made for the annulment of a valid decree of adoption, the right does not exist. In re S.D., 251 P.3d 1188 (Colo. App. 2010).

Plaintiff who sought to rescind adoption after 35 years failed to bring an action to set aside the adoption within a reasonable time, barring the court from finding the adoption to be legally void. In re S.D., 251 P.3d 1188 (Colo. App. 2010).

Applied in In re Adoption of P.H.A., 899 P.2d 345 (Colo. App. 1995).

19-5-215. Records. (Repealed)

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** Entire section amended, p. 943, § 4, effective March 27. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-5-216. Increased access for adoption - study. (1) (a) The department shall examine and evaluate the process of adoptive placements of children in the legal custody of the county departments of social services and identify those aspects of the process that may be improved to achieve the ultimate goal of permanency for the greatest number of children in safe and healthy adoptive homes. In conducting this analysis, the department should consider, but need not be limited to, the following:

(I) The best means by which to increase county accessibility to qualified families seeking to adopt and the best means by which to achieve placement of children available for adoption with such families;

(II) Whether further automation would be conducive to the achievement of permanency of children;

(III) The need for centralization of information;

(IV) The benefits of additional standardization;

(V) The resources of other interested entities or foundations that may be available to support public adoptions;

(VI) The programs and systems developed by other states to achieve maximum access and expedited permanency for children in safe and healthy adoptive homes; and

(VII) The methods used to reduce the number of disruptions in adoptive homes.

(b) (I) The executive director of the department is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of implementing this section; except that no gift, grant, or donation shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(II) The executive director of the department is authorized to apply for a federal waiver, if necessary, to authorize the use of federal grant moneys to implement this section.

(2) Repealed.

Source: L. 99: Entire section added, p. 1024, § 4, effective May 29. **L. 2002:** (2) repealed, p. 882, § 20, effective August 7.

PART 3

ACCESS TO ADOPTION INFORMATION

19-5-301. Legislative declaration. (1) The general assembly hereby finds and declares that adult adoptees, adoptive parents, biological parents, and biological siblings should have a qualified right of access to any records regarding their or their child's adoption or the adoption of their offspring or siblings and that such a qualified right must coexist with the right of such parties to privacy and confidentiality. The general assembly also finds that an adult adoptee, his biological or adoptive parent, or his biological sibling may desire to obtain information about each other at different points in time. Furthermore, the general assembly finds that confidentiality is essential to the adoption process and that any procedure to access information which relates to an adoption must be designed to maintain confidentiality and to respect the wishes of all involved parties.

(2) (a) It is the purpose of this part 3 to establish a confidential process whereby adult adoptees and adoptive parents who desire information concerning their or their child's adoption and biological parents and siblings who desire information concerning an adult adoptee may pursue access to such information.

(b) The general assembly further finds and declares that the purpose of establishing the confidential process set forth in this part 3 is to create a pool of individuals who the courts and interested parties may call upon to initiate a search for a biological relative. It is not the intent of the general assembly that such process shall be construed as the regulation of an occupation or profession.

Source: L. 89: Entire part added, p. 940, § 1, effective March 27.

ANNOTATION

Actual controversy between adverse parties must exist if a court is to sua sponte address the constitutionality of a statute. Juvenile court's ruling that this part 3 is unconstitutional was impermissible exercise of judicial authority since the issue was raised on behalf of unidentified parties that were not before the court on court's own motion in order to create a controversy that it then proceeded to decide. In re Tomlinson, 851 P.2d 170 (Colo. 1993).

19-5-302. Definitions. (Repealed)

Source: L. 89: Entire part added, p. 941, § 1, effective March 27. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-5-303. Commission created - duties. (1) There is hereby created in the department the adoption intermediary commission, referred to in this section as the "commission", that shall consist of thirteen members. The commission shall exercise its powers and perform the duties and functions specified by this part 3 as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in article 1 of title 24, C.R.S. Representation and appointment of such members shall be as follows:

(a) Three members shall represent the judicial department and shall be appointed by the chief justice or his or her designee;

(b) Two members shall represent the department and shall be appointed by the executive director of such department or his or her designee;

(c) Three members shall represent licensed adoption agencies and shall be appointed by a representative of a private adoption agency. Such representative shall be selected by the executive director of the department.

(d) Three members shall represent either adoptees, adoptive parents, biological parents of adoptees, or biological siblings of adoptees and shall be selected by the executive director of the department;

(e) Two members shall represent confidential intermediaries and shall have completed training as confidential intermediaries. Such members shall be appointed by the executive director of the department.

(2) The commission shall have responsibility for:

(a) Drafting a manual of standards for training confidential intermediaries and licensed child placement agencies that perform searches and contact persons pursuant to section 19-5-305 (3) (b) (III);

(b) Monitoring confidential intermediary training programs and child placement agencies with search and consent programs to ensure compliance with the standards set forth in the manual, with authority to approve or deny such programs based upon compliance with such standards;

(c) Maintaining an up-to-date list of persons who have completed training as confidential intermediaries or as persons who conduct searches for child placement agencies and communicating such list to the judicial department.

(3) The commission shall adopt its own rules of procedure, shall select a chairman, a vice-chairman, and such other officers as it deems necessary, and shall keep a record of its proceedings. The commission shall meet as often as necessary to carry out its duties, but in no instance shall it meet less than annually. The commission may seek input from confidential intermediary organizations in carrying out its duties.

(4) The commission shall be voluntary and shall not receive per diem payments.

Source: L. 89: Entire part added, p. 941, § 1, effective March 27. **L. 91:** IP(1) amended, p. 890, § 14, effective June 5. **L. 93:** (4) amended, p. 657, § 3, effective July 1. **L. 94:** IP(1) and (1)(b) to (1)(d) amended, p. 2689, § 213, effective July 1. **L. 97:** (1) amended, p. 1166, § 12, effective July 1. **L. 2000:** (1) and (2) amended, p. 1373, § 5, effective July 1. **L. 2005:** (2)(c) amended, p. 767, § 31, effective June 1; (2)(c) amended, p. 993, § 5, effective July 1.

19-5-304. Confidential intermediaries - confidential intermediary services. (1) (a) Any person who has completed a confidential intermediary training program that meets the standards set forth by the commission shall be responsible for notifying the commission that his or her name should be included on the list of confidential intermediaries to be maintained by the commission and made available to the judicial department. The commission shall adopt rules to determine when and under what conditions the name of a confidential intermediary shall be removed from the list available to the judicial department.

(b) Once a person is included on the list of confidential intermediaries, he or she shall be:

(I) Authorized to inspect confidential relinquishment and adoption records, post-adoption records, and dependency and neglect records, including but not limited to court files, within forty-five days after a motion to the court is filed by the following persons:

(A) An adult adoptee;

(B) An adoptive parent, custodial grandparent, or legal guardian of a minor adoptee;

(C) A biological parent or an adult biological sibling or half-sibling of an adult adoptee;

(D) An adult descendant of the adoptee or the adoptive parent, spouse of an adoptee, adult stepchild, or adopted adult sibling of an adoptee with the notarized written consent of the adult adoptee;

(E) A biological grandparent of an adoptee with the notarized written consent of the biological parent. No written consent is required if the biological parent is deceased.

(F) The legal representative of any of the individuals listed in sub-subparagraphs (A) to (E) of this subparagraph (I);

(G) A former foster child who may or may not have been adopted, who is eighteen years of age or older, and who is searching for a birth sibling who is also eighteen years of age or older, who may or may not have been adopted, and who may or may not have been in the foster care system;

(II) Available, subject to time constraints, for appointment by the court to act as a confidential intermediary for any of the parties listed in subparagraph (I) of this paragraph (b).

(2) (a) Any of the parties listed in subparagraph (I) of paragraph (b) of subsection (1) of this section, any of whom are eighteen years of age or older, may file a motion, with supporting affidavit, in the court where the adoption took place, to appoint one or more confidential intermediaries for the purpose of determining the whereabouts of such individual's unknown relative or relatives; except that no one shall seek to determine the whereabouts of a relative who is younger than eighteen years of age. The court may rule on said motion and affidavit without hearing and may appoint a trained confidential intermediary.

(b) The court-appointed confidential intermediary shall make a diligent search of the adoption records and post-adoption records in an effort to find the sought-after relative. If the confidential intermediary successfully locates the relative sought, the confidential intermediary shall provide that relative with the opportunity to:

(I) Consent to or to refuse to allow contact by the person seeking contact;

(II) Fill out a contact preference form and updated medical history statement as prescribed in section 19-5-305 (1.5);

(III) Consent to or refuse to authorize disclosure of the adoption records to the person seeking such access.

(2.5) For purposes of paragraph (b) of subsection (1) of this section and subsection (2) of this section, "legal guardian" shall not include a governmental entity of any foreign country from which a child has been adopted or any representative of such governmental entity.

(3) Any information obtained by the confidential intermediary during the course of his or her investigation shall be kept strictly confidential and shall be utilized only for the purpose of arranging a contact between the individual who initiated the search and the sought-after biological relative or for the purpose of obtaining consent for the release of adoption records.

(4) (a) When a sought-after biological relative is located by a confidential intermediary on behalf of the individual who initiated the search, the confidential intermediary shall obtain consent from both parties that they wish to personally communicate with one another.

(b) Contact shall be made between the parties involved in the investigation only when consent for such contact has been received by the court.

(c) If consent for personal communication is not obtained from both parties, all relinquishment and adoption records and any information obtained by any confidential intermediary during the course of his or her investigation shall be returned to the court and shall remain confidential.

(5) All confidential intermediaries shall inform both the requesting biological relative and the sought-after biological relative of the existence of the voluntary adoption registry set forth in section 25-2-113.5, C.R.S.

(6) Any person acting as a confidential intermediary who knowingly fails to comply with the provisions of subsections (3) and (4) of this section commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of five hundred dollars.

Source: L. 89: Entire part added, p. 942, § 1, effective March 27. **L. 97:** (1) and (2) amended, p. 1166, § 13, effective July 1. **L. 99:** (1)(b), (2), (3), and (4)(c) amended and (2.5) added, p. 1131, § 3, effective July 1. **L. 2000:** (1) and (2) amended, p. 1368, § 2, effective July 1. **L. 2005:** (2) amended, p. 984, § 1, effective July 1. **L. 2009:** IP(1)(b) and IP(1)(b)(I) amended and (1)(b)(I)(G) added, (SB 09-079), ch. 59, p. 214, § 1, effective March 25.

ANNOTATION

Actual controversy between adverse parties must exist if a court is to sua sponte address the constitutionality of a statute. Juvenile court's ruling that this part 3 is unconstitutional was impermissible exercise of judicial authority since the issue was raised on behalf of unidentified parties that were not before the court on court's own motion in order to create a controversy that it then proceeded to decide. In re Tomlinson, 851 P.2d 170 (Colo. 1993).

19-5-305. Access to adoption records - contact with parties to adoption - contact preference form and updated medical history statement. (1) **Legislative declaration.** The general assembly finds that on May 20, 1949, the general assembly amended Colorado law to provide that all adoption records in existence on that date and those records that came into existence after that date were to be sealed and thereby maintained confidential from the public. Thereafter, in 1967, the general assembly acted to preserve the anonymity of the birth parents, the child, and the adoptive parents in adoption actions. However, as a result of these changes, many adoptees were unable to make informed medical decisions, determine genetic consequences of certain medical and reproductive decisions, and enjoy the benefits relating to knowledge about one's family history. In 1989, the general assembly enacted a process by which parties to an adoption could attempt contact with one another through a confidential intermediary. Thereafter, in 1999, the general assembly enacted legislation that allowed for limited access to certain adoption records by persons involved in the adoption. The general assembly hereby determines that it is appropriate to allow access to certain adoption information by the parties to the adoption proceeding and the adoptee, but not by the public at large. In 2005, the general assembly determined that it would be beneficial to the members of the adoption triad to allow each birth parent the opportunity to indicate a preference regarding future contact, including the opportunity to authorize the release of the original birth certificate and to authorize the release of his or her own contact information, and to provide a method to make information about medical history available to the adoptee. In addition, the general assembly found that a delayed implementation of the access to a birth parent's contact information would allow members of the adoption triad to avail themselves of resources to address issues that may arise from searching for or reuniting with biological relatives or from making decisions not to pursue contact or information.

(1.5) **Contact preference and updated medical history statements - authorizations to release of the original birth certificate.** (a) The state registrar shall prescribe and make available to any birth parent named on an original birth certificate in the records of the state registrar a contact preference form on which the birth parent may state a preference regarding contact by an adult adoptee, an adult descendant of an adoptee, or a legal representative of the adoptee or descendant. The contact preference form shall allow the birth parent to voluntarily include the birth parent's contact information and shall provide the birth parent with options to indicate a preference regarding whether the birth parent would prefer or not prefer future contact with the adoptee or adult descendant of the adoptee or a legal representative of the adoptee or descendant and, if contact is preferred, whether the birth parent would prefer contact directly or through a confidential intermediary or a child placement agency. The contact preference form shall also include an option for the birth parent to authorize the release of the original birth certificate. An authorization to

release may be exercised and submitted to the state registrar at any time after January 1, 2006. The contact preference form shall also indicate that the birth parent can change his or her contact preference form by notifying the state registrar in writing.

(b) The state registrar shall also prescribe an updated medical history statement, that a birth parent may submit, with the completed contact preference form, to the state registrar. Such medical history statement shall be a brief narrative statement written by the birth parent indicating medical information about the birth parent or other biological relatives. Such medical history statement shall indicate that the birth parent is waiving confidentiality of any medical information supplied in the statement with respect to the adoptee, an adult descendant of an adoptee, or a legal representative of such person and to the state registrar or his or her designees. The birth parent may submit additional updated medical history statements to the state registrar no more frequently than every three years, unless there is a significant change in medical history.

(c) The contact preference forms and updated medical history statements shall be maintained in the records of the state registrar and shall be accessible to the adult adoptee, the adult descendant of the adoptee, or the legal representative of the adoptee or descendant, who submits a written application form, proof of identity, and an explanation of the person's relationship to the adoptee, if applicable.

(d) In developing the contact preference form and the updated medical history statement, the state registrar shall consult with and obtain input from the adoption intermediary commission.

(e) When the state registrar receives a contact preference form or an updated medical history statement or both from a birth parent, the state registrar or the state registrar's authorized designee shall match the contact preference form and the updated medical history statement, if applicable, with the adoptee's sealed original birth certificate, and shall update its records to indicate that a birth parent has filed a contact preference form or an updated medical history statement or both with the state registrar. The state registrar is authorized to verify the submission of a contact preference form or an updated medical history statement and to provide a copy of a contact preference form to a confidential intermediary appointed pursuant to section 19-5-304 or to a designated employee of a child placement agency who is searching pursuant to subparagraph (III) of paragraph (b) of subsection (3) of this section.

(f) The state registrar shall designate certain employees to process, maintain, allow inspection of, and make copies of contact preference forms and updated medical history statements and to prepare and issue noncertified copies of the unaltered original birth certificates as authorized in this section.

(g) The state registrar shall accept contact preference forms and updated medical history statements on and after January 1, 2006.

(2) **Determination of accessibility of records and contact.** Subject to the provisions of subsection (4) of this section, the accessibility of adoption records, in addition to inspection authorized by a court upon good cause shown pursuant to section 19-1-309, and the ability of a party to the adoption proceeding or the adoptee to contact the adoptee or another party, shall be governed by the following provisions based upon the date on which the adoption was finalized:

(a) **Adoptions finalized prior to September 1, 1999.** (I) (A) Except to the extent disclosure is made in designated adoptions and except for an original birth certificate that is obtained through the provisions of paragraph (d) of this subsection (2), all adoption records, as that term is defined in section 19-1-103 (6.5), relating to adoptions finalized prior to September 1, 1999, shall remain confidential, and the names of the parties thereto and the name of the adoptee shall remain anonymous if the adoption was finalized on or after July 1, 1967. Such adoption records shall be accessible by any of the parties listed in section 19-5-304 (1) (b) (I) through the appointment of a confidential intermediary pursuant to section 19-5-304 who successfully obtains consent from the person sought to release such adoption records or by mutual consent of the reunited parties upon proof of identification or as otherwise provided by law.

(B) (Deleted by amendment, L. 2000, p. 1369, 3, effective July 1, 2000.)

(II) (Deleted by amendment, L. 2005, p. 985, § 2, effective July 1, 2005.)

(b) **Adoptions finalized on or after September 1, 1999.** (I) (A) **Adoption records.** All adoption records, as that term is defined in section 19-1-103 (6.5), relating to adoptions finalized on or after September 1, 1999, shall be open to inspection and available for copying by an adult adoptee, an adoptive parent of a minor adoptee, a custodial grandparent of a minor adoptee, or the legal representative of any such individual. In addition, all those records described in section 19-1-103 (6.5) (a) (I), (6.5) (a) (II), (6.5) (a) (IV), and (6.5) (a) (V), relating to adoptions finalized on or after September 1, 1999, shall be open to inspection and available for copying by an adoptee's adoptive grandparent or by an adult descendant of an adoptee or the adoptive parent with the notarized written consent of the adult adoptee or the minor adoptee's adoptive parent. In addition, all those records described in section 19-1-103 (6.5) (a) (I), (6.5) (a) (II), (6.5) (a) (IV), and (6.5) (a) (V), relating to adoptions finalized on or after September 1, 1999, shall be open to inspection and available for copying by an adult sibling of an adult adoptee, an adoptee's spouse, or the legal representative of any such individual upon notarized written consent of the adult adoptee. No other person or entity shall have access to such records except as otherwise provided by law.

(B) (Deleted by amendment, L. 2000, p. 1369, 3, effective July 1, 2000.)

(C) **Prior written statements of birth parents.** Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), the adoption records shall not be open for inspection or available for copying with respect to any identifying information concerning a birth parent if such birth parent has previously provided the court and the child placement agency, if applicable, with a signed and notarized written statement, within three years after the final order of relinquishment or termination specifying that such parent wishes the identifying information concerning that parent to remain confidential. The written statement shall remain in the court's and the child placement agency's relinquishment or termination file unless later withdrawn by the parent. The birth parent submitting such a written statement may also submit to the court and to the child placement agency a letter of explanation that shall be released to the adoptee at the time that the adoptee makes a request for inspection of the adoption records. No child placement agency shall be liable to any person for the failure of a birth parent to submit such a written statement to the court. The child placement agency shall make reasonable efforts to notify any and all birth parents who executed a statement, pursuant to this sub-subparagraph (C), of the option to submit a contact preference form and an updated medical history statement as provided in subsection (1.5) of this section.

(II) **Contact.** For adoptions finalized on or after September 1, 1999, contact by an adult adoptee, an adoptive parent of a minor adoptee, or an adult descendant of the adoptee or the adoptive parent with a birth parent or biological relative may be attempted at any time directly or through another person or agency including, but not limited to, a confidential intermediary appointed pursuant to section 19-5-304 or an employee of a child placement agency trained to perform a search pursuant to subparagraph (III) of paragraph (b) of subsection (3) of this section; except that contact with a birth parent who has previously provided a written statement to the court and to the child placement agency as described in sub-subparagraph (C) of subparagraph (I) of this paragraph (b) or who has filed a contact preference form, indicating a preference to be contacted through a confidential intermediary, may be attempted through a confidential intermediary appointed pursuant to section 19-5-304.

(III) For adoptions finalized on or after September 1, 1999, a birth parent shall have access to adoption records and contact with the adoptee or the adoptive family as otherwise provided by law.

(c) **Deceased parties.** (I) Notwithstanding paragraphs (a), (b), and (d) of this subsection (2), if it is determined:

(A) That the birth parent is deceased, then the person seeking the information, whether he or she is the adult adoptee, the adoptive parent of a minor adoptee, or the legal representative of any such individual, shall be allowed access to the adoption records. If one of the birth parents is deceased and the other birth parent is living but is nonconsenting then access to the records shall be permitted as provided in this paragraph (c) without the name of the nonconsenting birth parent. In addition, an adoptee's adoptive grandparent, an adult

descendant of an adult adoptee, an adoptee's spouse, or the legal representative of any such individual shall be allowed access to those records described in section 19-1-103 (6.5) (a) (I), (6.5) (a) (II), (6.5) (a) (IV), and (6.5) (a) (V) if such person seeking the information has the notarized written consent of the adult adoptee or the adoptive parent if the adoptee is a minor.

(B) That the adoptee is deceased, then the person seeking the information, whether he or she is the adoptive parent, an adult descendant of the adoptee, or the legal representative of any such individual shall be allowed access to the adoption records. In addition, an adoptee's adoptive grandparent, an adult descendant of the adoptive parent, an adoptee's spouse, or the legal representative of any such individual shall be allowed access to those records described in section 19-1-103 (6.5) (a) (I), (6.5) (a) (II), (6.5) (a) (IV), and (6.5) (a) (V).

(II) (Deleted by amendment, L. 2000, p. 1369, 3, effective July 1, 2000.)

(d) **Access to original birth certificates for adoptions finalized prior to September 1, 1999.** (I) This paragraph (d) applies to adoptions finalized in this state prior to September 1, 1999.

(II) On and after January 1, 2007, the following persons may apply to the state registrar for a noncertified copy of the unaltered original birth certificate of an adoptee who was born in this state or whose adoption was finalized in this state or both and whose adoption records have been sealed due to an adoption proceeding:

(A) An adult adoptee who is eighteen years of age or older;

(B) An adult descendant of the adoptee who submits a written explanation of the person's relationship to the adoptee;

(C) An adult birth parent who signed or is named on the original birth certificate;

(D) The legal representative of any of the individuals listed in sub-subparagraphs (A) to (C) of this subparagraph (II).

(III) On and after January 1, 2007, the state registrar shall issue a noncertified copy of the unaltered original birth certificate to any of the persons who are allowed to apply for an original birth certificate pursuant to subparagraph (II) of this paragraph (d), and who submit proof of identity, if:

(A) Both birth parents have filed a contact preference form with the state registrar authorizing the release of the original birth certificate; or

(B) Only one birth parent has filed an authorization to release the original birth certificate prior to January 1, 2007, and the state registrar has not received an authorization to release the original birth certificate from the other birth parent, the state registrar shall issue the original birth certificate to the applicant with the name of the nonconsenting birth parent redacted.

(IV) Between July 1, 2005, and January 1, 2007, there shall be a statewide and national public information campaign conducted pursuant to section 19-5-306 to inform the public about the ability to obtain access to original birth certificates, to inform birth parents about the ability to file a contact preference form and updated medical history statements, to inform birth parents about the ability to authorize the release of an original birth certificate as part of the contact preference form, and to provide resource referrals to members of the adoption triad.

(V) Nothing in this paragraph (d) shall be construed to affect the ability of a member of the adoption triad to obtain access to adoption records, including the original birth certificate, through the appointment of a confidential intermediary, through an employee of a child placement agency trained to perform a search pursuant to subparagraph (III) of paragraph (b) of subsection (3) of this section, through mutual consent of the reunited parties, or through a court order upon good cause shown pursuant to section 19-1-309.

(3) **Access to identifying information through child placement agencies.** (a) Upon proof of identity of the person submitting the consent form, a licensed child placement agency shall accept and may seek a consent form, as that term is defined in section 19-1-103 (28.5), from an adult adoptee or from either adult adoptee's birth parent or from an adoptive parent of a minor adoptee or from the legal representative of a minor adoptee authorizing the release of identifying information, as that term is defined in section 19-1-103 (63.5), concerning the person submitting the consent form, to the extent such information is

available to the child placement agency. If only one birth parent has filed a consent form with the child placement agency, the child placement agency or any succeeding custodian of the records shall provide a copy of the identifying information without the name of and without identifying information about the nonconsenting birth parent.

(b) (I) Upon inquiry by an adult adoptee or an adult adoptee's birth parent or an adoptive parent of a minor adoptee seeking information about another party from a licensed child placement agency, the child placement agency shall be authorized to release identifying information to the inquiring person, upon proof of identity by the inquiring person, if the licensed child placement agency is in possession of a consent form from the party about whom information is sought authorizing such release.

(II) In those circumstances in which a child placement agency has released identifying information pursuant to paragraph (a) of this subsection (3), the child placement agency may attempt to locate at the last known address the person who had originally submitted the consent form and, upon locating such person, advise him or her of the release and provide him or her with the opportunity to fill out a contact preference form and updated medical history statement as prescribed in subsection (1.5) of this section. If the inquiring person also submitted a consent form authorizing the release of identifying information about him or her, the child placement agency may provide such identifying information to the person located.

(III) A child placement agency that accepts a consent form may perform a search for the sought party, subject to the requirement that an employee designated by the child placement agency to perform a search and to contact the sought party shall have completed training that meets the standards set forth by the adoption intermediary commission.

(c) A licensed child placement agency that accepts a consent form may charge a reasonable fee to cover the direct and indirect costs associated with the services provided pursuant to this subsection (3), if a written fee agreement has been signed by the agency and the party submitting the consent form prior to the provision of any service. If a child placement agency charges a fee, then the child placement agency shall make reasonable efforts to locate the person being sought and to release the information the child placement agency obtained to the person located. The licensed child placement agency shall be required to provide a list of names, addresses, and telephone numbers of organizations performing similar services prior to signing any fee agreement with any party submitting a consent form. Information in the post-adoption record is confidential and shall not be disclosed by a licensed child placement agency or any succeeding custodian of the records, or a court except as specifically permitted in this part 3, or as otherwise permitted by law.

(d) The release of any information by a licensed child placement agency pursuant to this subsection (3) shall be subject to the provisions of subsection (4) of this section.

(4) **Access to information and contact concerning sibling groups.** Notwithstanding the provisions set forth in subsections (1.5), (2), and (3) of this section authorizing access to adoption records and contact with an adoptee, in those circumstances in which one family has adopted two or more siblings, access to the adoption records concerning an adoptee and contact with an adoptee shall not occur until all of the siblings adopted by the family have attained eighteen years of age.

(5) **Adult adoptee's restriction on access to records.** Notwithstanding the provisions of subsection (2) of this section, an adult adoptee may, at any time, provide the court that finalized the adoption and the child placement agency with a signed and notarized written statement specifying that such adult adoptee wishes to maintain identifying information concerning that adoptee, other than the original birth certificate, confidential. The written statement shall remain in the court's adoption file unless later withdrawn by the adoptee. Nothing in this subsection (5) shall be construed to affect access to records through the confidential intermediary process.

Source: L. 99: Entire section added, p. 1132, § 4, effective July 1. **L. 2000:** (2)(a)(I)(A), (2)(a)(I)(B), (2)(b)(I)(A), (2)(b)(I)(B), (2)(b)(I)(C), (2)(b)(II), (2)(c), (3), and (5) amended, p. 1369, § 3, effective July 1. **L. 2005:** Entire section amended, p. 985, § 2, effective July 1.

Cross references: For the provisions referring to confidential intermediaries formerly found in subsection (2)(a)(II), see § 19-5-304 (2)(b). (See L. 2005, p. 984.)

ANNOTATION

For adoptions finalized after July 1, 1951, but before July 1, 1967, an adoptee may have access to the names of his or her birth parents and to all court records and papers regarding the adoption and shall not be required to utilize the confidential intermediary process in order to gain access to that information. In re J.N.H., 209 P.3d 1221 (Colo. App. 2009).

19-5-306. Public information campaign. The executive directors of the department of human services and the department of public health and environment, or such executive directors' designees, shall work together to design and implement efforts within existing appropriations to assist in informing the public about the existence and availability of the confidential intermediary process established in this part 3 and the voluntary adoption registry established pursuant to section 25-2-113.5, C.R.S., to inform the public about the change in the availability of adoption records, including birth certificates, and other records related to the adoption process as set forth in section 19-5-305, and to inform birth parents about the opportunity to complete contact preference forms and submit updated medical history statements as set forth in section 19-5-305. Such efforts shall be implemented within existing appropriations on and after July 1, 2005, by disseminating information to the public through child placement agencies and through the use of public service announcements and such other additional means of communication as the executive directors or their designees determine appropriate. The public information campaign shall also provide referral information on community resources that may be available to the adoption triad to assist them in dealing with issues that arise in searches and reunifications with relatives or in deciding not to seek contact or information about relatives. Such resources shall include a variety of sources, including child placement agencies, social workers, therapists and faith-based counselors, and organizations designed to provide support to members of the adoption triad.

Source: L. 99: Entire section added, p. 1132, § 4, effective July 1. **L. 2005:** Entire section amended, p. 993, § 6, effective July 1.

19-5-307. Child placement agency - transfer of records. If a child placement agency terminates its child placement activities, prior to termination of services, the child placement agency shall microfilm or preserve with state-of-the-art record storage methods as prescribed by the department of human services any relevant files on adoptions and transfer them to the division in the department of human services responsible for child care licensing. The state board of human services shall promulgate rules to require child placement agencies to scan adoption records for purposes of transferring them upon termination of child placement activities to the division in the department of human services responsible for child care licensing.

Source: L. 2000: Entire section added, p. 1372, § 4, effective July 1. **L. 2005:** Entire section amended, p. 970, § 5, effective June 2.

PART 4

ACCESS TO NONIDENTIFYING ADOPTION INFORMATION

19-5-401. Definitions. (Repealed)

Source: L. 93: Entire part added, p. 655, § 1, effective July 1. **L. 94:** (4) amended, p. 2689, § 214, effective July 1. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-5-402. Access to nonidentifying information. Any adult adoptee or any adoptive parent may request nonidentifying information about the adoptee or the birth parents of the adoptee from the department. The department shall provide directly to the inquiring adult adoptee or adoptive parent or to the qualified agency selected pursuant to section 19-5-403 the nonidentifying information which is available to the department. The department shall adopt rules governing the disclosure of nonidentifying information.

Source: L. 93: Entire part added, p. 656, § 1, effective July 1.

19-5-403. Authority for department to select agencies. The department is authorized to select private, licensed child placement agencies authorized to handle adoptions for the disclosure of nonidentifying information pursuant to this part 4. The department shall, by rule, establish qualifying criteria by which the licensed child placement agencies authorized to handle adoptions shall be selected, which criteria shall include, but shall not be limited to, a requirement that the agencies maintain all information which identifies members of the birth family strictly confidential.

Source: L. 93: Entire part added, p. 656, § 1, effective July 1.

ARTICLE 6

Support Proceedings

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

19-6-101.	Initiation of proceedings - support - repayment of birth-related debt.	19-6-103.	Summons.
		19-6-104.	Hearing - orders.
		19-6-105.	Failure to comply.
19-6-101.5.	Amendments of proceedings - adding children.	19-6-106.	Child support - guidelines - schedule of basic support obligations.
19-6-102.	Venue.		

19-6-101. Initiation of proceedings - support - repayment of birth-related debt. (1) (a) Proceedings to compel parents, or other legally responsible persons, to support a child or children may be commenced by any person filing a verified petition in the court of the county where the child resides or is physically present, or in the county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.

(b) Repealed.

(2) A petition under this article may be filed at any time prior to the twenty-first birthday of the child.

(3) Once the court has acquired jurisdiction, such jurisdiction shall be retained regardless of the child's place of residence or physical presence.

(4) The minority of the petitioner or of the respondent shall in no way affect the validity of the proceedings.

(5) Actions brought under this article shall be entitled, "The People of the State of Colorado in the Interest of ....., children, upon the Petition of ....., petitioner, and concerning ....., respondent."

(6) A petition filed pursuant to this article shall contain the following advisements:

(a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S.; and

(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** (1) and (2) amended, p. 795, § 22, effective July 1. **L. 91:** (1) amended, p. 254, § 14, effective July 1. **L. 95:** (1) amended, p. 1398, § 3, effective July 1. **L. 2005:** (6) added, p. 379, § 6, effective January 1, 2006. **L. 2006:** (6)(b) amended, p. 516, § 3, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective June 30, 1999. (See L. 95, p. 1398.)

ANNOTATION

Law reviews. For note, "Enforcement of Support Duties in Colorado", see 33 Rocky Mt. L. Rev. 70 (1960).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This article provides for a simple civil proceeding requiring parents to support their children, as their means permit. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

This section, from the time it became a law, requires a defendant, as the father of a child, to contribute to its support and maintenance, thus relieving the mother or others upon whom the burden may chance to fall. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957) (decided under former § 22-1-1, CRS 53).

Juvenile court maintains jurisdiction in support cases where the child's parents are married or where the paternity of the child is not contested. Marital status is irrelevant and does not preclude a support action under this article. People ex rel. S.E.G., 213 P.3d 1033 (Colo. App. 2009).

Duty of support until 21 years or emancipation not abrogated. There is no general mandate in subsection (2) of this section or former § 19-1-103 (3) or § 13-22-101 which abrogates the duty of support a parent has toward his minor child until the age of 21 or emancipation. In re Weaver, 39 Colo. App. 523, 571 P.2d 307 (1977).

The language with regard to support is specifically not limited to parents. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Custodian with legal obligation to support can be compelled to pay. The custodian of an adjudicated child in need of supervision with a legal obligation to support that child is properly within the scope of the juvenile court jurisdiction and can be compelled to pay support for the maintenance of said child. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

And such person can intervene in child in need of supervision proceedings. Since the juvenile court has the power to compel legally responsible persons to support a child, it necessarily follows that a person furnishing support to a child in accordance with an order of the juvenile court has the right to intervene in a child in need of supervision proceeding as an interested party for the purpose of recovering the cost of that support. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Although the Colorado Children's Code is designed to primarily protect the welfare and safety of Colorado children, nothing in the code requires that the child to be supported reside in the state. Therefore, father's argument that the trial court lacked subject matter jurisdiction to enter a support order where the children to be supported lived in Russia was invalid. People ex rel. A.K., 72 P.3d 402 (Colo. App. 2003).

There is no ambiguity in the wording of former articles 6 and 7 (new articles 4 and 6) of the Colorado Children's Code. It is quite clear that paternity and support issues are to be determined under article 6 and article 7 is to be used only for the determination of support where paternity is not in dispute. It was error for the court to have conducted a paternity proceeding under the petition for support proceedings. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

Determination of paternity precedes support obligation. The provision for support proceedings presupposes that paternity has been established either by a paternity proceeding or by acknowledgment of paternity by the father in writing or by furnishing support. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Under the present statutory scheme, where paternity is contested, a support order cannot be entered under this article absent a paternity determination made within the framework pro-

vided by the article 4 of this title. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Article 4 of this title provides the procedures by which a paternity determination is to be made when paternity is disputed. In the absence of a paternity determination, no child support order can be made against a putative father pursuant to this article unless paternity is uncontested. This is so because, before any support order can be entered under this article, the court must find that the person from whom support is sought is a parent or other person legally obligated to support the child. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

In cases in which paternity is disputed, whether in a proceeding under this article or article 4, paternity must be determined according to the procedures outlined under this article before the legal obligation for support can be imposed. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

The issue of paternity may not be adjudicated as an adjunct of support proceedings since the exclusive means of adjudicating contested paternity is under the article concerning paternity proceedings. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Limitations bar to paternity actions did not violate equal protection. A mother could bring actions to establish paternity for purposes of support only under article 6 of the Colorado Children's Code, as it existed prior to its 1977 repeal and reenactment, providing for paternity proceedings, and if she failed to bring them before the child reaches the age of five years, the actions were thereafter barred, and such a result did not violate the equal protection guaranty of the constitution. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Nor did different limitations period for support actions. When a former statute provided that no proceeding to establish paternity or furnish support should be initiated after a child was five years old unless the father had acknowledged paternity in writing or by furnishing support, whereas proceedings to compel fathers of illegitimate children or other legally responsible persons to support a child might be filed any time before the child's eighteenth birthday, there was no violation of the equal protection clause. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dismissed mem., 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

Where child was conceived and born during wedlock and is presumed legitimate until the presumption is rebutted, petitioner cannot be deprived of the right to proceed under this article by the mere denial of paternity by respondent. People in Interest of R.M., 37 Colo. App. 209, 548 P.2d 1282 (1975); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

Effect of presumption of legitimacy in support proceedings. A child born in wedlock who has the benefit of the strong presumption of legitimacy should reasonably be able to rely on that presumption in seeking support absent a judicial action by the presumed father challenging paternity. B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

Respondent's bare denial of paternity is insufficient to require termination of proceedings under this article. People in Interest of R.M., 37 Colo. App. 209, 548 P.2d 1282 (1975).

Effect of affirmative defense of nonaccess and denial of paternity. Where a proceeding for support is commenced within the statutory period allowed by subsection (2) and the respondent denies paternity and asserts the affirmative defense of nonaccess, the proceeding then becomes one under the Uniform Parentage Act to establish paternity and to compel support. People in Interest of S.K.H., 42 Colo. App. 126, 594 P.2d 594 (1979).

19-6-101.5. Amendments of proceedings - adding children. (1) In any existing case commenced under this article, if it is alleged that another child has been conceived of the parents named in the existing case, that child shall be added to the existing case if at least one of the presumptions of paternity specified in section 19-4-105 applies for the purpose of establishing paternity and child support. The caption shall be amended to include the added child.

(2) The party amending the petition pursuant to subsection (1) of this section shall serve the amended petition with the new caption upon the other parties in the manner set forth in section 19-6-103 (2).

(3) Once the court has acquired jurisdiction over the proceedings, such jurisdiction shall be retained regardless of the added child's physical presence or place of residence.

(4) An amended petition filed pursuant to this article shall comply with the requirements set forth in section 19-6-101.

(5) Notwithstanding the provisions of subsection (1) of this section, in any case where there exists more than one alleged or presumed father for a child pursuant to section 19-4-105, a new case shall be commenced for that child to determine the child's paternity,

establish child support, and address any other related issues. If it is determined that the child is the child of parents named in an existing case, the cases shall be consolidated into the initial action pursuant to rule 42 of the Colorado rules of civil procedure.

Source: L. 2008: Entire section added, p. 1349, § 5, effective January 1, 2009.

19-6-102. Venue. A petition filed under this section shall be brought in the county in which the child resides or is physically present, or in any county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** Entire section amended, p. 795, § 23, effective July 1. **L. 91:** Entire section amended, p. 255, § 15, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-6-103. Summons. (1) Upon filing of the petition, the clerk of the court or the attorney for the petitioner or the delegate child support enforcement unit shall issue a summons stating the substance of the petition and requiring the respondent to appear at the time and place set for hearing on the petition.

(2) Service of the summons shall be by personal service as provided in the Colorado rules of civil procedure. In addition to any other method provided by rule or statute, including rule 4(e) of the Colorado rules of civil procedure, when there is a basis for personal jurisdiction over an individual living outside this state pursuant to section 14-5-201, C.R.S., service may be accomplished by delivering a copy of the summons, together with a copy of the petition upon which it was issued, to the individual served. Such service may be by private process server or by sending such copies to such individual by certified mail with proof of actual receipt by such individual.

(3) The hearing shall be set for a day not less than ten days after service is completed or on such later date as the court may order.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (1) amended, p. 795, § 24, effective July 1. **L. 93:** (2) amended, p. 1564, § 15, effective September 1. **L. 96:** (1) amended, p. 613, § 16, effective July 1. **L. 2005:** (2) amended, p. 379, § 7, effective April 22.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Denver department of social services not stranger to proceedings. Where the Denver department of social services was before the juvenile court when it was awarded and accepted custody of a minor and it initially recommended placement of the child, its contention that it was in effect a stranger to the proceedings, being neither served with a summons nor given a hearing, is totally without support. City & County of Denver v. Brockhurst Boys Ranch, Inc., 195 Colo. 22, 575 P.2d 843 (1978).

19-6-104. Hearing - orders. (1) If the court or delegate child support enforcement unit finds that the respondent has an obligation to support the child or children mentioned in the petition or notice, the court or delegate child support enforcement unit may enter an order directing the respondent to pay such sums for support as may be reasonable under the circumstances, taking into consideration the factors found in section 19-4-116 (6). The court or delegate child support enforcement unit may also enter an order directing the appropriate

party to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period which occurred prior to the entry of the support order established under this article.

(1.5) At the hearing, the court shall give a verbal advisement to the parties that a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S. The judge or magistrate shall further advise the parties that, if genetic tests are not obtained prior to the legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

(2) If, at or before the hearing, the respondent waives his right to a hearing and stipulates to the entry of a support order, such stipulation may be presented to the court. If the court finds that the amount stipulated is reasonable under the circumstances, it may enter an order of support in accordance with the stipulation.

(3) The court may enter a temporary support order to remain effective pending a final disposition of the proceeding.

(3.5) Upon the filing of a proceeding under this article or upon the filing of a proceeding originating under article 13.5 of title 26, C.R.S., the court may enter an order allocating parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S., except that, in matters involving a nonresident party, the court shall first determine whether it has authority to issue an order allocating parental responsibilities pursuant to article 13 of title 14, C.R.S. Nothing in this subsection (3.5) shall be construed to authorize a delegate child support enforcement unit to negotiate or mediate the allocation of parental responsibilities in any proceeding initiated under this article or article 13.5 of title 26, C.R.S.

(4) The court may modify an order of support only in accordance with the provisions of and the standard for modification in section 14-10-122, C.R.S.

(5) The court may order that the respondent initiate the inclusion of the child or children under a medical insurance policy currently in effect for the benefit of the respondent, purchase medical insurance for the child or children, or, in some other manner, provide for the current or future medical needs of the child or children. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and copayments.

(5.5) All child support orders entered pursuant to this article shall include the social security account numbers and dates of birth of the parties and of the children who are the subjects of the order and the parties' residential and mailing addresses.

(6) Any order made pursuant to this article shall not be exclusive.

(7) The court may assess the costs of the action as part of its order.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (4) amended, p. 795, § 25, effective July 1. **L. 93:** (5.5) added, p. 1564, § 16, effective September 1. **L. 94:** (1) amended, p. 1542, § 17, effective May 31. **L. 97:** (5.5) amended, p. 1277, § 18, effective July 1. **L. 99:** (5.5) amended, p. 1087, § 6, effective July 1. **L. 2005:** (3.5) added, p. 379, § 9, effective July 1; (1.5) added, p. 379, § 8, effective January 1, 2006.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (5.5), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section, compelling the father to care for and support an unborn child and its mother, is constitutional. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953) (decided under former CSA, C. 33, § 1).

Article 4 of this title provides the procedures by which a paternity determination is to be made when paternity is disputed. In the absence of a paternity determination, no child

support order can be made against a putative father pursuant to this article unless paternity is uncontested. This is so because, before any support order can be entered under this article, the court must find that the person from whom support is sought is a parent or other person legally obligated to support the child. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Modification of a child support order entered in a parentage action is governed by the provisions of this section which requires a showing of a "change in relevant circumstances". M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

Trial court erred as a matter of law when it applied the standard for modification of a support order pursuant to the Uniform Dissolution of Marriage Act when the support order was entered under the Uniform Parentage Act and the standard for modification as set forth in this section should have been applied. Ashcraft v. Allis, 747 P.2d 1274 (Colo. App. 1987).

Unless an order specifically states that it is not subject to modification, a trial court may modify a lump-sum child support order. M.F. v. L.M., 780 P.2d 69 (Colo. App. 1989).

Juvenile court properly considered the father's earning ability and the parties' agreement to sell jointly owned house in determining whether an increase in child support was warranted for child born out of wedlock and the juvenile court did not abuse its discretion in ordering increased child support upon the sale of said house. M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

The language with regard to support is specifically not limited to parents. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Court has wide discretion in determining awards of child support. People in Interest of W.M., 642 P.2d 794 (Colo. App. 1982).

Juvenile court has wide discretion in determining awards of child support and the court's decision will not be disturbed absent an abuse of discretion. M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

Custodian with legal obligation to support can be compelled to pay. The custodian of an adjudicated child in need of supervision with a legal obligation to support that child is properly within the scope of the juvenile court jurisdiction and can be compelled to pay support for the maintenance of said child. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Rebuttal of presumption of legitimacy. Where the husband defended against a child support action on the grounds he was not the real father, the court held that the presumption that a child conceived in wedlock is the offspring of the husband is the strongest presumption known to law. It is not, however, conclusive and can only be overcome by clear and convincing proof that the husband is either impotent or had no access to the wife at any time when, according to the course of nature, conception could have occurred. People in interest of A.M.D. v. R.C.D., 29 Colo. App. 202, 481 P.2d 123 (1971).

Denver department of social services not stranger to proceedings. Where the Denver department of social services was before the juvenile court when it was awarded and accepted custody of a minor and it initially recommended placement of the child, its contention that it was in effect a stranger to the proceedings, being neither served with a summons nor given a hearing, is totally without support. City & County of Denver v. Brockhurst Boys Ranch, Inc., 195 Colo. 22, 575 P.2d 843 (1978).

No authority to assess costs against state. Former subsection (6) (now subsection (7)) does not give the court of appeals the authority to assess costs against the state for a frivolous appeal. People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982).

Applied in B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

19-6-105. Failure to comply. (1) A person failing to comply with an order of the court entered under this article shall be found in contempt of court in accordance with section 14-14-110, C.R.S.

(2) The court shall have authority to issue writs of execution for the collection of accrued and unpaid installments of support orders.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (1) amended, p. 796, § 26, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The language with regard to support is specifically not limited to parents. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Custodian with legal obligation to support can be compelled to pay. The custodian of an adjudicated child in need of supervision with a legal obligation to support that child is properly within the scope of the juvenile court jurisdiction and can be compelled to pay support for the maintenance of said child. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

19-6-106. Child support - guidelines - schedule of basic support obligations. The provisions of section 14-10-115, C.R.S., shall apply to all child support obligations, established or modified, as a part of any proceeding under this article, whether filed on or subsequent to July 1, 1988.

Source: L. 88: Entire section added, p. 746, § 17, effective July 1.

ARTICLE 7

Protections for Youth in Foster Care

19-7-101.	Legislative declaration.	19-7-103.	Access to extracurricular activities - legislative declaration - rules.
19-7-102.	Protection against identity theft.		

19-7-101. Legislative declaration. (1) The general assembly hereby finds and declares that youth in foster care, excluding those in the custody of the division of youth corrections or a state mental hospital, should enjoy the following:

(a) To receive appropriate and reasonable adult guidance, support, and supervision in a safe, healthy, and comfortable environment where he or she is treated with respect and dignity;

(b) To be free from physical, sexual, emotional, or other abuse or corporal punishment;

(c) To receive adequate and healthy food, adequate clothing, and an adequate allowance, as appropriate;

(d) To receive medical, dental, vision, and mental health services as needed;

(e) To be free of the administration of prescription medication or other chemical substances, unless authorized by a physician;

(f) To be free to contact those persons working on his or her behalf, including but not limited to, case workers, attorneys, foster youth advocates and supporters, court-appointed special advocates, and probation officers;

(g) To be free to contact the child protection ombudsman, county department of social services, or the department of human services regarding any questions, concerns, or violations of the rights set forth in this article, to speak to representatives of those offices privately, and to be free from threats or punishment for making complaints;

(h) As appropriate, to make and receive confidential telephone calls and to send and receive unopened mail in accordance with his or her permanency goals;

(i) To be free to attend religious services and activities;

(j) To be allowed to maintain an emancipation bank account and manage personal income, consistent with the youth's age and developmental level, unless prohibited by his or her case plan;

(k) To be free from being abandoned or locked in a room;

(l) To receive an appropriate education, have access to transportation, and participate in extracurricular, cultural, and personal enrichment activities consistent with the youth's age and developmental level;

(m) As appropriate, to be free to work and develop job skills that are in accordance with his or her permanency goals;

(n) As appropriate, to be free to have social contacts with people outside the foster care system, such as teachers, church members, mentors, and friends in accordance with his or her permanency goals;

(o) To be free to attend independent living classes if he or she meets program and age requirements;

(p) To consult with the court conducting the youth's permanency hearing, in an age-appropriate manner, regarding the youth's permanency plan, pursuant to section 19-3-702 (3.7);

(q) To have a safe place to store personal belongings;

(r) As appropriate to his or her age and developmental level, to be allowed to participate in and review his or her own case plan, if he or she is twelve years of age or older, and to receive information about his or her out-of-home placement and case plan, including being informed of any changes to the case plan;

(s) To confidentiality of all juvenile court records, consistent with existing law;

(t) To have fair and equal access to available services, placement, care, treatment, and benefits based on his or her treatment plan and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group, national origin, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status;

(u) At sixteen years of age or older, to have access to existing information regarding the educational options available to him or her, including, but not limited to, the course work necessary for vocational and postsecondary educational programs, and information regarding financial aid available for postsecondary education;

(v) To have school stability that presumes the youth will remain in the school in which he or she is enrolled at the time of placement, unless remaining in that school is not in his or her best interests;

(w) To remain in the custody of his or her parent or legal guardian unless his or her welfare and safety or the protection of the public would be otherwise endangered and the right that the court proceed with all possible speed to a legal determination that will serve his or her best interests pursuant to section 19-1-102;

(x) To be placed in a home where the foster caregiver is aware of and understands the youth's unique history as it relates to his or her care;

(y) To receive effective case management and planning that will prioritize the safe return of the youth to his or her family or move the youth on to other forms of permanent placement;

(z) As appropriate to the youth's developmental level and if he or she is twelve years of age or older, to be involved in meetings at which decisions are made about his or her future and to have the child welfare agency bring together his or her family group and other supporters to decision-making meetings at which the group creates a plan for the youth's future;

(aa) To placement in the least restrictive setting appropriate to the youth's needs;

(bb) To have a guardian ad litem appointed to represent the youth's best interests; and

(cc) To live with or be visited by his or her siblings.

(2) The general assembly further declares that subsection (1) of this section represents guidelines to promote the physical, mental, social, and emotional development of youth in foster care and to prepare them for a successful transition back into their families or the community. The application of these guidelines may be limited to reasonable periods during the day or restricted according to the routine of family foster care homes to ensure the protection of children and foster families.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 319, § 1, effective August 10.

19-7-102. Protection against identity theft. (1) The court shall ensure that each youth in foster care, excluding youth in the custody of the division of youth corrections or a state mental hospital, who is sixteen through eighteen years of age obtains a free credit report. If the credit report shows evidence of possible identity theft, the person assisting the youth shall inform the court and refer the matter to a governmental or nonprofit entity on

the referral list developed pursuant to subsection (2) of this section for remedial action. The child's guardian ad litem shall advise the youth of possible consequences of and options to address the possible identity theft, including the right to report the matter to law enforcement and seek possible prosecution of the offender.

(2) (a) On or before July 31, 2012, the department of human services shall develop, in consultation with county departments of social services, a referral list of governmental and nonprofit entities that are authorized to assist a youth in foster care, excluding a youth in the custody of the division of youth corrections or a state mental hospital, who has found evidence of possible identity theft on his or her credit report. An entity on the referral list developed pursuant to this subsection (2) is authorized to take any necessary remedial actions to clear the youth's credit record and shall report the results of its actions to the county department of social services with legal custody of the youth.

(b) In compiling the referral list pursuant to paragraph (a) of this subsection (2), the department of human services, and any county departments of social services consulted therein, shall not be subject to liability pursuant to the extent provided by article 10 of title 24, C.R.S.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 322, § 1, effective August 10.

19-7-103. Access to extracurricular activities - legislative declaration - rules. (1) The general assembly finds and declares that it is important for youth in foster care, excluding those in the custody of the division of youth corrections or a state mental hospital, to have increased access to normative, developmentally appropriate extracurricular activities to help prepare them for independence. Foster parents and group home parents or group center administrators shall make a reasonable effort to allow a youth in their care to participate in extracurricular, cultural, educational, work-related, and personal enrichment activities. On or before July 31, 2012, the department of human services shall promulgate rules for the implementation of this section. The rules shall address policies, including but not limited to waiver of any fingerprint-based criminal history records checks for community entities, excluding all individuals required to obtain a fingerprint-based criminal history records check pursuant to section 26-6-107, C.R.S., providing extracurricular activities and guidelines for determining in what situations it is appropriate to waive fingerprint-based criminal history records checks, to allow youth in foster care, excluding those in the custody of the division of youth corrections or a state mental hospital, who are twelve years of age and older to participate in age-appropriate extracurricular enrichment, social activities, and activities designed to assist those youth to make the transition to independence, build life skills, and enhance opportunities to make positive connections.

(2) If the department of human services or a county department of social services waives a fingerprint-based criminal history records check pursuant to subsection (1) of this section, the department of human services or county department of social services shall not be subject to liability pursuant to the extent provided by article 10 of title 24, C.R.S.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 322, § 1, effective August 10.

TITLE 20

DISTRICT ATTORNEYS

TITLE 20

DISTRICT ATTORNEYS

Art. 1. District Attorneys, 20-1-101 to 20-1-308.

ARTICLE 1

District Attorneys

Cross references: For limitation on terms of elected government officials, see § 11 of article XVIII of the state constitution; for vacancies in the office of district attorney, see § 1-12-204; for prosecution by information, see part 2 of article 5 of title 16; for preliminary hearing, see part 3 of article 5 of title 16; for prosecution in county court, see article 2 of title 16.

PART 1

GENERAL PROVISIONS

20-1-101. Bond and oath of district attorney and staff.
20-1-102. Appear on behalf of state and counties.
20-1-103. Collect forfeited recognizances.
20-1-104. Appear at inquests.
20-1-105. Opinions to county officers - representation.
20-1-106. Appear and advise grand juries.
20-1-106.1. Preparation and review of affidavits and warrants.
20-1-107. Disqualification - court to appoint prosecutor - legislative declaration.
20-1-108. When sick or absent, court to appoint.
20-1-109. Powers of appointee.
20-1-110. Intergovernmental cooperation and contracts.
20-1-111. District attorneys may cooperate or contract - contents.
20-1-112. Financial audits.
20-1-113. Reporting of criminal proceedings involving public school students.

PART 2

DEPUTIES, ASSISTANTS, AND EMPLOYEES

20-1-201. Deputies - chief deputies - staff.
20-1-202. Powers of deputies.
20-1-203. Compensation of deputy, chief deputy, and assistant district attorneys.
20-1-204. Powers of chief deputy.
20-1-205. Assistant district attorneys.
20-1-206. Powers.
20-1-207. Powers of assistant.
20-1-208. Special officers - stenographers - salaries.
20-1-209. Investigators and other employees.
20-1-210. Prohibition of practice of law - associates - members of district attorney's staff.

PART 3

COMPENSATION AND EXPENSES

20-1-301. Compensation of district attorneys.
20-1-302. Expenses.
20-1-303. District attorneys allowed necessary expenses.
20-1-304. District attorney and employees authorized to receive benefits. (Repealed)
20-1-305. Benefits not considered compensation or increase in emoluments. (Repealed)
20-1-306. Salaries paid from state and county funds.
20-1-307. Social security coverage.
20-1-308. Compensation and expenses - special prosecutors.

PART 1

GENERAL PROVISIONS

20-1-101. Bond and oath of district attorney and staff. (1) Every district attorney, before entering upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and the organic law of the state and that he will faithfully discharge the duties of his office. He shall also execute to the people of the state of Colorado a bond in the sum of five thousand dollars, with a good and sufficient individual, schedule, or blanket corporate surety bond, or other acceptable security, to be approved by the secretary of state, conditioned for the faithful discharge of the duties of his office, as the same are prescribed by law, and upon any breach of such bond, an action shall lie thereon for the benefit of any county fund or person injured thereby.

(2) As the district attorney may direct, the assistant and deputy district attorneys and other employees appointed pursuant to this title may be required to file with the secretary of state the bond required by law to be filed by district attorneys.

Source: R.S. p. 262, § 3. **G.L.** omitted. **G.S.** § 1061. **R.S. 08:** § 2095. **C.L.** § 5774. **CSA:** C. 55, § 1. **CRS 53:** § 45-1-1. **C.R.S. 1963:** § 45-1-1. **L. 71:** p. 516, § 1.

ANNOTATION

Failure to file paperwork for oath with secretary of state in a timely fashion does not create a permanent vacancy. No permanent vacancy is created if an elected district attorney misses the deadline to timely file the necessary paperwork for his or her oath and bond requirements with the secretary of state. Therefore, the elected district attorney is authorized to prosecute defendants during a period of a temporary defect. The district attorney acts as a de facto officer whose acts performed in the discharge of his or her official duties were valid and binding. People v. Scott, 116 P.3d 1227 (Colo. App. 2004).

Applied in People v. District Court, 193 Colo. 528, 568 P.2d 445 (1977).

20-1-102. Appear on behalf of state and counties. (1) Every district attorney shall appear in behalf of the state and the several counties of his district:

(a) In all indictments, actions, and proceedings which may be pending in the district court in any county within his district wherein the state or the people thereof or any county of his district may be a party;

(b) On the hearing of every writ of habeas corpus sued out by any person charged with or convicted of any public offense before the judge of his district;

(c) In any such indictment, action, or proceeding which may be removed from the district court of any county within his district for appellate review as provided by law and the Colorado appellate rules;

(d) In any such indictment, action, or proceeding which may be brought to the district court of any county in his district by change of venue from any other district; and

(e) When he may deem it advisable to do so, in the preliminary examination of persons charged with any offense before any judge within his district.

(2) Nothing in this section shall be so construed as to prevent the county commissioners of any county from employing one or more attorneys to appear and prosecute or defend in behalf of the people of the state or of such county, in any such indictment, action, or proceeding.

(3) The district attorney, when enforcing support laws pursuant to statute or contract, may use any remedy, either civil or criminal, available under the laws of this state and may appear on behalf of the people of the state of Colorado in any judicial district in this state. When doing so, the district attorney represents the people of the state of Colorado, and nothing within this section shall be construed to create an attorney-client relationship between the district attorney and any party, other than the people of the state of Colorado, or witness to the action; except that any district attorney who is a contractual agent for a county department of social services shall collect a fee pursuant to section 26-13-106 (2), C.R.S.

Source: R.S. p. 262, § 4. **G.L.** § 895. **G.S.** § 1056. **R.S. 08:** § 2096. **C.L.** § 5975. **CSA:** C. 55, § 2. **CRS 53:** § 45-1-2. **C.R.S. 1963:** § 45-1-2. **L. 64:** p. 392, § 32. **L. 81:** (3) added, p. 901, § 2, effective May 27. **L. 82:** (3) amended, p. 281, § 5, effective April 2. **L. 88:** (3) amended, p. 635, § 13, effective July 1. **L. 2005:** (3) amended, p. 499, § 4, effective August 8.

ANNOTATION

Officer of court and member of executive branch. While a district attorney is an officer of the court as any other attorney, a district attorney is not a judicial officer nor a part of the judicial branch of the government. A district attorney belongs to the executive branch. People v. District Court, 186 Colo. 335, 527 P.2d 50 (1974).

The district attorney is part of the executive branch of government, and has broad discretion in selecting the deputies that will appear on his behalf. People v. District Court, 767 P.2d 239 (Colo. 1989).

District attorney is proper officer to institute quo warranto proceedings in inferior courts. The district attorney, and not the attorney general, is the proper officer to institute proceedings in quo warranto in the inferior courts and he may also under this section follow the case into the supreme court, from which time the attorney general would at once be entitled to control its further progress. People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897).

The district attorney may institute proceedings in the nature of quo warranto upon his own responsibility, and, if upon request he refuses so to do, a private person, as relator, may in a proper case institute them without leave of court. People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897).

District attorney appears for state in criminal proceedings. The district attorney is under duty, as provided by this section, to appear in behalf of the state in all pending criminal proceedings. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

But is not a party in civil actions of habeas corpus. Proper procedure to be followed by one claiming to be imprisoned without legal authority is to file a civil action seeking a writ of habeas corpus, naming as respondent the person or persons in whose custody he is detained; the people of the state of Colorado is not a proper party to such proceedings since an application for a writ of habeas corpus is a civil action, independent of the criminal charge, and is not part of the inquiry based on the information. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

The district attorney is expressly authorized by this statute to appear on behalf of the People in all criminal cases for crimes committed within the geographical boundaries of the judicial district served by the district attorney. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

Section 24-31-101 and this section are not inconsistent. Section 24-31-101, permitting the governor to appoint the attorney general to prosecute cases in which the state is a party or is interested, and this section, directing the district attorney to appear on behalf of the state or counties of his district where the state or the people thereof or any county may be a party, are not inconsistent. They may stand together. The specific duty imposed upon the district attorneys in no way limits or excludes the general authority of the attorney general upon the same subject. People ex rel. Witcher v. District Court, 190 Colo. 483, 549 P.2d 778 (1976); People v. Vickers, 199 Colo. 305, 608 P.2d 808 (1980).

In determining whom to prosecute for criminal activity and on what charge, a prosecutor has wide discretion. People v. MacFarland, 189 Colo. 363, 540 P.2d 1073 (1975).

A district attorney has wide prosecutorial discretion. Dresner v. County Court, 189 Colo. 374, 540 P.2d 1085 (1975).

Discretionary choice of statutes under which to prosecute. Where reasonable distinctions can be drawn between a specific statute and a general statute, it is a matter of prosecutorial discretion for the district attorney to choose under which statute he will prosecute. People v. Trigg, 184 Colo. 78, 518 P.2d 841 (1974).

And which charges to prosecute. A prosecutor has constitutional power to exercise his discretion in deciding which of several possible charges to press in a prosecution. Myers v. District Court, 184 Colo. 81, 518 P.2d 836 (1974).

Ultimate discretionary charging authority is vested in the district attorney and, unless such authority is delegated, a defendant may not assert that some other person exercised authority to make a binding governmental promise. Lucero v. Goldberger, 804 P.2d 206 (Colo. App. 1990).

But the conscious exercise of selectivity in the enforcement of laws is not in itself a constitutional violation, and equal protection is not denied absent a showing that a prosecutor has exercised a policy of selectivity based upon an unjustifiable standard such as race, religion, or any other arbitrary classification. People v. MacFarland, 189 Colo. 363, 540 P.2d 1073 (1975).

Defendant has the burden of proving discriminatory prosecution on the part of the prosecutor. People v. MacFarland, 189 Colo. 363, 540 P.2d 1073 (1975).

Power to dismiss case. The law does not vest in the district attorney power to dismiss cases subject to the approval of the court, but vests the absolute power of dismissal in that officer. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

Knowledge of staff imputed to district attorney. Knowledge of the chief deputy and of the chief investigator for the district attorney is knowledge to the entire office and the district attorney will be charged with that knowledge. DeLuzio v. People, 177 Colo. 389, 494 P.2d 589 (1972).

Disqualification of district attorney. When a prosecuting attorney purposefully exposes a jury to inadmissible and highly prejudicial evidence, such conduct will not be condoned and a new trial will be granted. Although the trial judge in such a case may impose a broad array of sanctions to prevent overzealous prosecution, disqualification of the prosecuting attorney assigned to a particular case does not lie within the scope of the trial judge's discretion. People v. District Court, 767 P.2d 239 (Colo. 1989).

Prosecutors absolutely immune from suit under 42 U.S.C. § 1983 for "advocatory" functions closely related to the judicial process, but only qualifiedly immune from suit for "investigative" or "administrative" functions, which have a more attenuated connection with the judicial process. Florey v. District Court, 713 P.2d 840 (Colo. 1985).

Test to determine whether prosecutor absolutely or only qualifiedly immune from suit under 42 U.S.C. § 1983 for certain acts. Factors to be considered in determining whether acts of prosecutors are "advocatory" in nature and absolutely immune or "investigative" or "administrative" functions and only qualifiedly immune: (1) Whether the challenged conduct occurred prior to or subsequent to the filing of formal criminal charges against the person seeking redress; (2) whether there existed safeguards that could deter or mitigate prosecutorial abuse and thus reduce the need for civil action to redress the violation of constitutional rights; and (3) whether the challenged conduct more closely resembled traditional police conduct than prosecutorial conduct. Florey v. District Court, 713 P.2d 840 (Colo. 1985).

A district attorney was entitled to claim immunity from suit in federal court under the eleventh amendment to the U.S. Constitution when the suit arose out of the investigation of allegations relating to embezzlement by a professor at the university of Colorado. Rozek v. Topolnicki, 865 F.2d 1154 (10th Cir. 1989).

Power of county commissioners to employ attorney. The concluding sentence of this section reserves to the general assembly authority to confer upon county commissioners, or save to that body by legislation, the power to employ an attorney to appear and prosecute or defend in behalf of the people of the state or county in such indictments, suits, and proceedings as those in which the power and duty to appear have been delegated to the district attorney. The board, under this section, may employ other counsel, or counsel to assist the district attorney therein, but not to wrest from him power to control them. McMullin v. Bd. of Comm'rs, 29 Colo. 478, 68 P. 779 (1902).

The general assembly did not take from office of district attorney any of the duties or characteristics belonging to it under this section, or attempt to vest the same in the office of county attorney, or authorize the board of county commissioners to do so. McMullin v. Bd. of Comm'rs, 29 Colo. 478, 68 P. 779 (1902).

Under this section the county commissioners are authorized to employ one or more attorneys on behalf of the county, and their action in the matter will not be reviewed by the courts unless it is made to appear that they acted unlawfully and corruptly. Morris v. Bd. of Comm'rs, 25 Colo. App. 416, 139 P. 582 (1914).

This section does not require district attorney to have prosecuted contempt proceedings on remand. This section provides for the representation of the state and counties in cases in which they are parties. It does not pertain to proceedings other than criminal ones. No basis for conclusion advocated by landowner that legislature intended section to protect the rights of defendants in contempt proceedings. To the contrary, like § 18-1-102, this section exists to protect the state's interests not the defendant's. Eichhorn v. Kelley, 111 P.3d 544 (Colo. App. 2004).

Applied in People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976); People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980); People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982); People v. Castro, 657 P.2d 932 (Colo. 1983).

20-1-103. Collect forfeited recognizances. It is the exclusive duty of the district attorney to provide for the collection of forfeited recognizances and turn the money so collected into the registry of the court declaring the forfeiture. In fulfilling such duty, the district attorney may contract with any person or entity and provide for payment of any fees and costs for the services of such person or entity out of such moneys collected.

Source: L. 1891: p. 135, § 1. **R.S.** 08, § 2097. **C.L.** § 5976. **CSA:** C. 55, § 3. **CRS 53:** § 45-1-3. **C.R.S. 1963:** § 45-1-3. **L. 73:** p. 1403, § 34. **L. 98:** Entire section amended, p. 962, § 5, effective May 27.

Cross references: For procedure in disposition of security deposits upon forfeiture or termination of bond and enforcement when forfeiture not set aside, see §§ 16-4-109 and 16-4-110.

ANNOTATION

Proper time for forfeiture of bond of a nonappearing defendant is on the day and hour specified in the bond for appearance. The district attorney should be present in court representing the people in the prosecution of defendant at the appointed time and, in the event of his failure to appear, should be in readiness to perform his statutory duties in connection with the forfeiture of defendant's bond. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Penal sum of breached bond should be reduced to judgment. After an order has been entered declaring a bond forfeited, whether in the nature of a declaration of default or an interlocutory decree, the claim in debt arising out of breach of the bond should be reduced to a judgment in behalf of the people and against the persons answerable for the amount of the penal sum specified in the bond. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

The bonding agency, no matter how he is described or characterized, is not a bondsman in this case; he is not a party to this litigation; he is not accountable for defendant's appearance or nonappearance. Not being obligated, he is not in default; he owes no money, and no valid judgment could be entered against him. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Applied in People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

20-1-104. Appear at inquests. The district attorneys of the several judicial districts in the state of Colorado shall appear in their respective districts at all inquests held by any coroner and have power to subpoena and examine witnesses at any such inquest.

Source: L. 1889: p. 151, § 1. **R.S. 08:** § 2098. **C.L.** § 5977. **CSA:** C. 55, § 4. **CRS 53:** § 45-1-4. **C.R.S. 1963:** § 45-1-4.

20-1-105. Opinions to county officers - representation. (1) The district attorney, upon request of any county officer of any county within his district, without fee, shall give his opinion in writing upon all questions of law having references to the duties of such officer which may be submitted and shall file and preserve in his office a copy of all such opinions.

(2) The district attorney, upon a request in the form of a resolution by the board of county commissioners of any county within his district, shall represent any county officer enumerated in article 10 of title 30, C.R.S., or the employees of any such officer in the defense of any civil suit or civil proceeding brought against such officer in any court of this state or any federal court if such action directly relates to the duties of the county officer.

(3) In any city and county, the district attorney, upon a request in the form of a resolution by city council, shall represent any city and county officer, as provided in the charter of such city and county, or the employees of any such officer in the defense of any civil suit or civil proceeding brought against such officer in any court of this state or any federal court if such action directly relates to the duties of any such officer.

Source: R.S. p. 262, § 5. **G.L.** § 896. **G.S.** § 1057. **R.S. 08:** § 2099. **C.L.** § 5978. **CSA:** C. 55, § 5. **CRS 53:** § 45-1-5. **C.R.S. 1963:** § 45-1-5. **L. 72:** p. 294, § 1.

Cross references: For district attorney representation of public trustees or county treasurers acting as trustees, see § 38-37-111.

ANNOTATION

Services of county attorneys must be authorized. In view of this section, a county attorney should not be allowed to recover for services rendered to county officials other than the board of county commissioners, unless such other officials are first authorized by the commissioners to employ or consult an attorney. Morris v. Bd. of Comm'rs, 25 Colo. App. 416, 139 P. 582 (1914).

Before the county attorney can act for county clerk in making demand on former clerk to turn over funds, records, etc., the county clerk should show that the board of county commissioners has given authority or direction to such other officials to employ or consult an attorney. Marsh v. People, 112 Colo. 81, 146 P.2d 218 (1944).

20-1-106. Appear and advise grand juries. The district attorneys for the several judicial districts in the state of Colorado shall appear in their respective districts at all sessions of any grand jury which may be convened in any county within their respective districts, and it is the duty of the district attorney to advise any grand jury convened within his district and to examine witnesses who may be subpoenaed before any such grand jury.

Source: L. 17: p. 165, § 1. **C.L.** § 5979. **CSA:** C. 55, § 6. **CRS 53:** § 45-1-6. **C.R.S. 1963:** § 45-1-6.

ANNOTATION

Duty to appear at grand juries. This section not only gives the district attorney the right to appear at all sessions of grand juries, but makes it his duty to do so. People ex rel. District Att'y v. District Court, 75 Colo. 412, 225 P. 829 (1924).

Purpose of section. This right and duty of the district attorney to appear before grand juries is but a recognition and indorsement of a practice which has long prevailed, not only in many of the states, and in the federal courts, but in England. The presence of the prosecuting officer tends to expedite the work of the grand jury, and the knowledge of the facts there obtained is of advantage to him in the preparation and trial of the indictments returned. People ex rel. District Att'y v. District Court, 75 Colo. 412, 225 P. 829 (1924).

Mere presence of investigators from the district attorney's staff at grand jury sessions may not in and of itself be sufficient to invalidate an indictment in a given case unless prejudice is shown. People v. Lewis, 183 Colo. 236, 516 P.2d 416 (1973).

Grand jurors must remain free to reach their own conclusions based on the facts presented to them. People v. Meyers, 617 P.2d 808 (Colo. 1980).

Prosecutor must exercise due care to assure that he does not unduly influence the grand jury. People v. Meyers, 617 P.2d 808 (Colo. 1980).

And transcript released to defense where misconduct affects indictment or probable cause determination. Only in cases where clear examples of inappropriate conduct by the district attorney may affect the validity of the defendant's indictment or the determination of probable cause should the trial court sacrifice the confidentiality of the grand jury proceedings and release a transcript of the grand jury colloquy between the district attorney and the grand jury to the defense counsel. People v. District Court, 199 Colo. 398, 610 P.2d 490 (1980).

Applied in People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

20-1-106.1. Preparation and review of affidavits and warrants. (1) The district attorneys of the several judicial districts in the state of Colorado shall:

(a) Render, in their quasi-judicial capacity, legal advice to peace officers, upon the request of such officers or of the court, pertaining to the preparation and review of affidavits and warrants for arrests, searches, seizures, nontestimonial identification items, and court orders for the production of records;

(b) Examine and evaluate each affidavit for a no-knock search warrant sought pursuant to part 3 of article 3 of title 16, C.R.S., and render legal advice regarding such affidavit to the peace officer submitting the affidavit before such affidavit is submitted to a judge. A district attorney, including any assistant district attorney, chief deputy district attorney, or deputy district attorney, shall indicate approval of an affidavit by placing the date and his or her signature and attorney registration number on the affidavit as allowed by statute or court rule. A district attorney shall only sign an affidavit for a no-knock search warrant

sought pursuant to part 3 of article 3 of title 16, C.R.S., upon satisfaction that the information in such affidavit:

(I) Fulfills the requirements of section 16-3-303, C.R.S.; and

(II) Supports the lawful issuance of a search warrant pursuant to section 16-3-301, C.R.S.

(2) In the absence of the bad faith performance of the duties specified in this section, the district attorneys of the state of Colorado shall be immune from liability for the performance of said duties; except that such immunity shall not apply to charges of perjury in the first degree, perjury in the second degree, or false swearing brought pursuant to section 18-8-502, 18-8-503, or 18-8-504, C.R.S., respectively.

(3) The division of criminal justice within the Colorado department of public safety shall review existing policies relating to the issuance and use of no-knock search warrants pursuant to section 24-33.5-503 (1) (q), C.R.S.

Source: L. 85: Entire section added, p. 717, § 1, effective April 30. **L. 86:** Entire section amended, p. 772, § 13, effective July 1. **L. 2000:** Entire section amended, p. 651, § 2, effective July 1. **L. 2004:** (1)(a) amended, p. 1378, § 3, effective July 1.

Cross references: For the description of "peace officer", see § 16-2.5-101.

20-1-107. Disqualification - court to appoint prosecutor - legislative declaration. (1) The general assembly finds that the office of the district attorney was created by the state constitution and that the state constitution gives to the general assembly the exclusive authority to prescribe the duties of the office of the district attorney. The general assembly finds and declares that this section is necessary to protect the independence of persons duly elected to the office of district attorney.

(2) A district attorney may only be disqualified in a particular case at the request of the district attorney or upon a showing that the district attorney has a personal or financial interest or finds special circumstances that would render it unlikely that the defendant would receive a fair trial. A motion to disqualify a district attorney shall be served upon the district attorney at least two weeks before the motion is heard. Such motion shall contain at least a statement of the facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the movant and shall be supported by affidavits of witnesses who are competent to testify to the facts set forth in the affidavit. The district attorney may file a response in opposition to the motion and may appear at any hearing held on the motion. The judge shall review the pleadings and determine whether an evidentiary hearing is necessary. The motion shall not be granted unless requested by the district attorney or unless the court finds that the district attorney has a personal or financial interest or special circumstances exist that would render it unlikely that the defendant would receive a fair trial. The order disqualifying the district attorney shall be stayed pending any appeal authorized by this section. If the motion is brought at or before the preliminary hearing, it may not be renewed at the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

(3) An interlocutory appeal from an order of disqualification of a district attorney entered in the district court shall be filed in the supreme court pursuant to section 16-12-102 (2), C.R.S. An appeal from an order of disqualification filed in the county court shall be filed in the district court. In computing the time period within which a trial must be commenced, the period during which an appeal pursuant to this section is pending shall be excluded.

(4) If the district attorney is disqualified in any case which it is his or her duty to prosecute or defend, the court having criminal jurisdiction may appoint a special prosecutor to prosecute or defend the cause. The judge shall appoint the special prosecutor from among the full-time district attorneys, assistant district attorneys, or deputy district attorneys who serve in judicial districts other than where the appointment is made; except that, upon the written approval of the chief justice of the supreme court, the judge may appoint any disinterested private attorney who is licensed to practice law in the state of Colorado to serve as the special prosecutor. Any special prosecutor appointed pursuant to this section shall be compensated as provided in section 20-1-308.

Source: L. 1876: p. 65, § 1. **G.L.** § 897. **G.S.** § 1058. **R.S. 08:** § 2109. **C.L.** § 5994. **CSA:** C. 55, § 22. **CRS 53:** § 45-1-7. **C.R.S. 1963:** § 45-1-7. **L. 77:** Entire section amended, p. 858, § 2, effective May 24. **L. 2002:** Entire section amended, p. 758, § 4, effective July 1.

Cross references: For procedure when district attorney refused without justification to prosecute, see § 16-5-209.

ANNOTATION

Law reviews. For article, "Disqualifying a District Attorney When a Government Witness was Once the District Attorney's Client: The Law Between the Courts and the State", see 85 Den. U.L. Rev. 369 (2007).

2002 amendment to this section eliminates "appearance of impropriety" as a basis for disqualification of district attorneys. People v. Chavez, 139 P.3d 649 (Colo. 2006); People v. Manzanares, 139 P.3d 655 (Colo. 2006); People ex rel. N.R., 139 P.3d 674 (Colo. 2006).

Disqualification for appearance of impropriety does not violate separation of powers. Although appearance of impropriety is not specifically codified, it is an acceptable basis for disqualification. Once the decision to prosecute is made, it becomes a matter of judicial responsibility, not a matter of legislative declaration. Thus, there is no separation of powers problem. People v. Witty, 35 P.3d 69 (Colo. App. 2000).

Purpose. This section is designed to authorize the disqualification of a district attorney and to allow for the appointment of a special prosecutor only when the district attorney has an interest in the litigation apart from his professional responsibility of upholding the law. People v. District Court, 189 Colo. 159, 538 P.2d 887 (1975); People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

The 2002 amendment to subsection (2) eliminates "the appearance of impropriety" as a basis for disqualification. Under the current version of the statute, disqualification is proper only when (1) the district attorney requests his or her own disqualification, (2) the district attorney has either a personal or a financial interest in the prosecution, or (3) special circumstances exist that would make it unlikely that the defendant would receive a fair trial. People v. Lincoln, 161 P.3d 1274 (Colo. 2007).

The fundamental inquiry is whether disqualification of a district attorney appears reasonably necessary to ensure the integrity of the fact finding process, the fairness or appearance of fairness of trial, the orderly or efficient administration of justice, or public trust or confidence in the criminal justice system. People v. Palomo, 31 P.3d 879 (Colo. 2003); People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

District attorney's charging decision in February 2005 concerning crime allegedly committed in February 2002 was governed by the July 2002 amendment to this section rather than the version of this section in effect prior to the amendment. People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

Appointment is to avoid appearance of impropriety. The most compelling rationale for requiring appointment of a special prosecutor is avoidance of the appearance of impropriety. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Any inconvenience to the prosecution resulting from appointment of a special prosecutor is but a small price to pay to avoid the appearance of impropriety. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Disqualification is proper when the district attorney has some involvement in the defendant's case, which would impair that office's ability to prosecute the case fairly. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

A finding of "special circumstances" described in subsection (2) is to be made by the court and not the district attorney. People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

A district attorney does not have a personal interest in a prosecution that warrants disqualification unless he or she stands to receive some personal benefit or suffer some detriment from the outcome of the prosecution that is unrelated to his or her duty to enforce the law. People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

A district attorney must be disqualified in a criminal case where the attorney or member of his or her staff will appear as a witness and give testimony of sufficient consequence to prevent a fair trial. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

The fact that the defense intends to call a deputy district attorney as a witness does not, without more, require the court to disqualify the district attorney. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

Construction in pari materia. This section is in pari materia with § 16-5-201 et seq. and these sections should be construed, if possible, so as to be consistent and harmonious, one with the other, and in their several parts. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

Section authorizes court to supplant district attorney where impartial trial cannot be had through that officer. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

And power to appoint is not limited to contingencies specified. The power of the district court to make an appointment of a special attorney in criminal cases to act for and in place of the district attorney is not limited to the contingencies specified in this and the following section. It is within the inherent power of the court to appoint in other cases where necessary in the furtherance of justice, and for the due administration of the law. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

But appointment cannot be made where officer is present and not disqualified. This and the following section are not broad enough to permit the court to appoint a district attorney to prosecute in criminal cases when that officer is present in the court room and not disqualified. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

And a writ of prohibition will lie against the appointment of a special prosecutor to act as district attorney where the facts disclosed were not sufficient to authorize the appointment. People ex rel. Morgan v. First Judicial Dist. Court, 54 Colo. 237, 130 P. 324 (1913).

Presumption is that statutory ground for appointment existed. The district court has authority, in certain cases specified in this and the following section, to appoint someone to discharge the duties of the office of district attorney. When such an appointment is made, and in the absence of anything in the record to the contrary, the supreme court must presume that one of the statutory grounds existed when the appointment was made. Wilson v. People, 3 Colo. 325 (1877).

A second appointment may be made. Where the regular prosecuting officers are disqualified, and the special prosecutor declines to act further, it is not only within the power of the court, but is its clear duty to appoint an attorney to take action upon the matters thus presented. People ex rel. Morgan v. First Judicial Dist. Court, 54 Colo. 237, 130 P. 324 (1913).

Where all conditions are present to give the court authority under this section to appoint a special prosecutor, although such appointee be a second one, the court has power to again make an appointment. People ex rel. Morgan v. First Judicial Dist. Court, 54 Colo. 237, 130 P. 324 (1913).

Defendant should not have to demonstrate prejudice or lack of integrity. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Defendant need not demonstrate prejudice where the issue is the authority to commence the prosecution itself. Even though a new district attorney had replaced a disqualified district attorney when motion to revoke a deferred judgment and sentence was heard and determined, the issue was authority to commence prosecution itself and the fact that there was no prejudice to the defendant was not determinative of defendant's motion to dismiss. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

District attorney to be given notice of grounds for disqualification. This section requires that the district attorney be given sufficient notice of the grounds for the disqualification to enable him to determine the facts behind the motion to disqualify and to consider the state of the law relating to the grounds for disqualification. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

Trial courts have broad discretion in determining whether they should disqualify a district attorney from prosecuting a particular case. People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

A court commits an abuse of discretion if it makes a manifestly arbitrary, unreasonable, or unfair decision. People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

The question of whether an appearance of impropriety exists and the remedy therefor are uniquely questions for the court and must be committed to the trial court's broad discretion. People v. County Court, City & County of Denver, 854 P.2d 1341 (Colo. App. 1992).

Interest requiring removal defined. The interest which requires the removal of a district attorney for the particular occasion is not that which results from his becoming biased in favor of a defendant, but is such a concern in the outcome of the matter that he will either reap some benefit or suffer some disadvantage. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

It is the district attorney's duty to hold himself under proper restraint and avoid violent partisanship, partiality, and misconduct in the performance of his duties which may result in false accusations, and it is equally his duty to refrain from improper methods calculated to bring about a wrongful conviction as it is to use every legitimate means to obtain a just conviction. Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

The allegations of interest must show a concern in the outcome of the matter such that the district attorney will either reap some benefit or suffer some disadvantage; mere partiality will not suffice. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

Interest that creates the appearance of impropriety is sufficient to warrant disqualification. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

Accusing prosecutor of wrongdoing does not automatically create a conflict of interest sufficient to merit disqualification. People v.

Jimenez, 217 P.3d 841 (Colo. App. 2008).

Meaning of phrase "having criminal jurisdiction". The general assembly, by the words "having criminal jurisdiction", meant having such jurisdiction at the time when the appointment should become necessary, and when criminal jurisdiction is conferred all powers of criminal procedure are conferred with it. Glavino v. People, 75 Colo. 94, 224 P. 225 (1924).

It is incumbent upon one seeking to disqualify a prosecuting attorney to establish facts from which the trial court may reasonably conclude that the accused will probably not receive a fair trial to which he is entitled. Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

Appointment should be made where district attorney has private interest in criminal case. If a district attorney has a private interest in a criminal case under his jurisdiction, it is the court's duty to appoint another to act for him. In such a case the prosecutor should not act even by consent. People ex rel. Colo. Bar Ass'n v. ..., 90 Colo. 440, 9 P.2d 611 (1932); Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

Where he files information or dismisses cause because of interest. If, because of his interest, the district attorney files an information, the court should appoint some person to try the cause; if he dismisses a cause because of his interest, the court can and should appoint someone to file a new information and to prosecute the cause. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

Or where connected with defense of another case whose facts were interwoven with those of present case. The connection of the district attorney with the defense of another case, the facts of which were interwoven with the facts in the case at bar, held sufficient to warrant his being excused from prosecuting. Roberts v. People, 11 Colo. 213, 17 P. 637 (1888).

Prosecutor to withdraw when appearing as witness. The proper course of conduct, when the prosecutor knows in advance that he is going to appear as a witness, is to secure a replacement and withdraw as prosecutor. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

Disqualification proper if district attorney from office is material witness in the case. Pease v. District Ct., 708 P.2d 800 (Colo. 1985).

Disqualification not required merely because deputy district attorney called as defense witness. Trial court properly denied motion to disqualify district attorney because the testimony was entirely favorable to defendant; its significance would not have been enhanced had the case been prosecuted by a different office; and the testimony was not material in any event. People v. Victorian, 165 P.3d 890 (Colo. App. 2007).

Disqualification of district attorney due to involvement in suit against defendant. District attorney's employment, prior to filing criminal charges against defendant, as counsel in private capacity representing injured party in suit against defendant arising out of the circumstances leading to criminal prosecution, was grounds for disqualification in criminal action. People v. Jiminez, 187 Colo. 97, 528 P.2d 913 (1974).

Disqualification proper if prosecuting attorney had attorney-client relationship with defendant prior to employment as a prosecutor. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Section requires the disqualification of an assistant district attorney who, as a private attorney, had developed an attorney-client relationship with the defendant in connection with the case for which the defendant was being prosecuted. People v. Chavez, 139 P.3d 649 (Colo. 2006); People v. Manzanares, 139 P.3d 655 (Colo. 2006); People ex rel. N.R., 139 P.3d 674 (Colo. 2006).

For motion to disqualify the district attorney's office when an employee of the office previously represented the defendant, trial court must determine whether "special circumstances" exist that render it unlikely that defendant would receive a fair trial if prosecuted by the district attorney's office. People v. Chavez, 139 P.3d 649 (Colo. 2006); People v. Manzanares, 139 P.3d 655 (Colo. 2006); People ex rel. N.R., 139 P.3d 674 (Colo. 2006).

Prosecutor, a part-time district attorney, was permitted to practice law civilly in matters unrelated to the performance of his official duties. People v. Jiminez, 187 Colo. 97, 528 P.2d 913 (1974).

District attorney is disqualified from acting in grand jury's investigation of his own conduct. If, from any source which he deems sufficiently reliable to prompt him to act, the judge obtains information implicating the district attorney in any alleged offense which he has called to the attention of the grand jury, and acting on such information, directs that body to investigate the district attorney with respect to such offense, such action ipso facto disqualifies the district attorney from acting in such matters. People ex rel. Lindsey v. District Court, 29 Colo. 5, 66 P. 896 (1901).

It is neither manifestly arbitrary, unreasonable, nor unfair for the county court, in the exercise of its discretion, to hold that a public perception was created that intervenor was likely to be unfairly prosecuted where a deputy district attorney, on his own volition and without apparent necessity, had a warrant check run on intervenor he recognized in the county courthouse as a defendant in a pending county court criminal case, and, when instructed by the court not to have intervenor arrested, initiated

and became involved in physically subduing intervenor and in effecting just such an arrest, and then becoming the complaining witness against intervenor in a new complaint filed against him for violation of city ordinances arising out of the altercation. People v. County Court, City and County of Denver, 854 P.2d 1341 (Colo. App. 1992).

But is free to act as to all other matters before such grand jury. As to all matters which come before the grand jury other than those for which a special prosecutor has been appointed, the regular district attorney is free, and it is his duty, to act. People ex rel. Lindsey v. District Court, 29 Colo. 5, 66 P. 896 (1901).

Unsworn allegations that petitioner had testified against district attorney insufficient. Where petitioner's motion to disqualify sought to recuse the district attorney and his deputies and two special prosecutors because of conflict of interest because petitioner had testified against the district attorney before a grand jury, but petitioner offered no testimony or evidence to support the unsworn allegations, the trial court's denial of the motion will be upheld. Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

No grounds shown for disqualification. The language of a newspaper editorial which has been reproduced as a paid political advertisement by the district attorney, who is a candidate for mayor, indicates only the newspaper's belief that the district attorney is properly performing his responsibilities and duties as district attorney in the defendant's case and there are no other inferences which could be drawn from the language. It would be beyond belief that anyone could state on the basis of the editorial that defendant would be subjected to an unfair trial because of this district attorney's past, current, or future participation in the case, and hence, the district attorney is not to be disqualified under this section. People v. District Court, 189 Colo. 159, 538 P.2d 887 (1975).

District attorney's potential political benefit from the defendant's conviction was not sufficiently distinct from his or her professional responsibilities to warrant any finding of an improper interest in the outcome of the case. People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

Involvement in forfeiture proceeding too attenuated to create a conflict of interest. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

District attorney's interest in forfeiture action is part of obligation to enforce the laws of the state and therefore not an interest in the outcome of the case apart from upholding the law. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

Trial court abused its discretion in disqualifying the district attorney as the alleged interest did not rise to such a level as to impede or impugn his professional responsibility to uphold the law. To allow disqualification in this case would essentially provide defendants the unfettered option of disqualifying a prosecutor whenever a district attorney had knowledge of any fact surrounding a case. People v. C.V., 64 P.3d 272 (Colo. 2003).

Trial court had insufficient evidence to reach the conclusion that the district attorney had an interest in the case or that an appearance of impropriety existed such that the public would perceive the continued prosecution by the district attorney as so unjust and improper as to undermine their confidence in the criminal justice system. People v. C.V., 64 P.3d 272 (Colo. 2003).

District attorney's or his or her office's financial interest is a statutorily authorized basis for disqualification only if the financial interest would render it unlikely that defendant would receive a fair trial. For a financial interest to implicate the fairness of a trial, it must be outcome dependent or have a substantial impact on the district attorney's discretionary functions, such that the district attorney's conduct interferes with, is contrary to, or is inconsistent with his or her duty of seeking justice. People v. Perez, 238 P.3d 665 (Colo. 2010).

The special circumstances provision of subsection (2) requires a showing that facts exist rendering it unlikely that the defendant would receive a fair trial. People v. Perez, 238 P.3d 665 (Colo. 2010).

Trial court erred in disqualifying district attorney because none of the four grounds cited by the trial court constituted "special circumstances . . . that would render it unlikely that the defendant would receive a fair trial". The inquiry into whether an entire district attorney's office should be disqualified because of a prior representation by an individual prosecutor depends on whether confidential information gained from that prior representation has been or could be passed from the individual prosecutor to other members of the office who continue to prosecute the case. People v. Perez, 201 P.3d 1220 (Colo. 2009).

District attorney who had previously represented defendant did not have confidential information that could have been passed on to prosecutors because district attorney did not recall prior representation of defendant, did not perform any substantive work on case, and never received any information from defendant. People v. Perez, 201 P.3d 1220 (Colo. 2009).

District attorney's previous representation of potential witness and possible alternate suspect did not constitute a special circumstance. District attorney who aided preliminary investiga-

tion and who had previously represented potential witness and possible alternate suspect did not have confidential information and left the office before charges were filed. People v. Perez, 201 P.3d 1220 (Colo. 2009).

Discovery violation not a special circumstance warranting disqualification. For allegedly inadequate witness list, trial court should impose the least restrictive sanction that preserves the truth-finding process, restores a level playing field, and deters prosecutorial misconduct, not disqualification. People v. Perez, 201 P.3d 1220 (Colo. 2009).

Finally, funding arrangement whereby district attorney's office billed department of corrections for costs related to prosecuting crimes committed in a prison and department then forwarding reimbursements to counties was not a "special circumstance". District attorney's office did not obtain any intentional financial gain nor was there any double-billing. People v. Perez, 201 P.3d 1220 (Colo. 2009).

Facts showing an appearance of impropriety are no longer relevant in court's determination whether to disqualify a district attorney. The general assembly amended the statute, eliminating the "appearance of impropriety" as a ground for disqualifying a district attorney. People v. Loper, 241 P.3d 543 (Colo. 2010).

The "special circumstances" justifying disqualification of a district attorney must be extreme and must render it unlikely that a defendant would receive a fair trial. The suspicious manner in which the charges were brought and the involvement and possible influence on the district attorney by a probation officer employed by the judicial department raises concerns of potential impropriety, but this evidence does not bear on whether defendant would be unlikely to receive a fair trial. People v. Loper, 241 P.3d 543 (Colo. 2010).

Appointment of special prosecutor constituted an abuse of discretion where the only fact relied upon by the court was that one of the deputy district attorneys, not assigned to the case, was the brother of a state trooper who would be testifying in the case. People v. County Court, Jefferson County, 902 P.2d 413 (Colo. App. 1994).

Trial court abused its discretion in finding the present appearance of impropriety sufficient to warrant removal of the district attorney and the capital crimes unit. Where there are other remedies for the trial court to consider when timely, the remedy of disqualification for the appearance of impropriety in relationship to the victim's medical records is too severe. People v. Palomo, 31 P.3d 879 (Colo. 2001).

Special prosecutor, if ineligible because of membership in general assembly, is nevertheless an officer de facto. Glavino v. People, 75 Colo. 94, 224 P. 225 (1924).

When a special prosecutor is appointed, that person becomes the district attorney for that particular case, exercising plenary power. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

When an indictment is procured by or with the assistance of a prosecuting attorney who is disqualified to conduct the prosecution or when an information is presented by a disqualified prosecuting attorney, it is invalid. Once the disqualification of a district attorney is entered and the appointment of a special prosecutor becomes effective, the special prosecutor, and only the special prosecutor, is the authorized prosecuting attorney on the case. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

The scope of a special prosecutor's responsibility to prosecute cases after being appointed pursuant to this section includes not only the guilt phase of a case but also the means adopted to impose punishment upon an offender. Therefore, only the special prosecutor was authorized to make determinations regarding the necessity of filing a motion to revoke a deferred judgment and sentence. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

Trial court does not have discretion in ruling on the disqualification of a prosecuting attorney where the district attorney has confessed a disqualification and a special prosecutor has already been appointed. Trial court should have granted defendant's motion to dismiss even though disqualified district attorney's term of office was due to expire before a motion to revoke a deferred judgment and sentence filed by the district attorney was heard on the merits. The district attorney was not authorized to act after special prosecutor was appointed and an abuse of discretion standard of review has no application under these circumstances. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

20-1-108. When sick or absent, court to appoint. If he is sick or absent, such court shall appoint some person to discharge the duties of the office until the proper officer resumes the discharge of his duties.

Source: L. 1876: p. 65, § 2. **G.L.** § 898. **G.S.** § 1059. **R.S. 08:** § 2110. **C.L.** § 5995. **CSA:** C. 55, § 23. **CRS 53:** § 45-1-8. **C.R.S. 1963:** § 45-1-8.

ANNOTATION

"Absent" means absent from court. Glavino v. People, 75 Colo. 94, 224 P. 225 (1924).

The district attorney is supposed to be always present in court, and if absent the court may appoint some fit person to perform his duties. Glavino v. People, 75 Colo. 94, 224 P.2d 225 (1924).

20-1-109. Powers of appointee. The person thus appointed shall possess the same power as the proper officer would if he were present.

Source: L. 1876: p. 65, § 3. **G.L.** § 899. **G.S.** § 1060. **R.S. 08:** § 2111. **C.L.** § 5996. **CSA:** C. 55, § 24. **CRS 53:** § 45-1-9. **C.R.S. 1963:** § 45-1-9.

ANNOTATION

Special prosecutor becomes, to all intents and purposes, the district attorney. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

When the governor or the general assembly requires the attorney general to prosecute a criminal case in which the state is a party, he becomes to all intents and purposes the district attorney, and may in his own name and official capacity exercise all the powers of such officer, for he is then, and in that case, the public prosecutor. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

But he is independent of that official. A special appointee should be of the court's own selection, and as to the matters for which he is appointed, he becomes vested with all the powers of the district attorney, but independent of that official. People ex rel. Lindsey v. District Court, 29 Colo. 5, 66 P. 896 (1901).

And is authorized to sign information in his own name. Where the district attorney is disqualified from prosecuting a case and the court appoints a special prosecutor, the prosecutor so appointed is authorized to sign an information in the case in his own name, and the fact that he placed before his name the name of the district attorney and added to his own signature the words "special deputy" neither added to, nor detracted from, the proper authentication in his own name. The additions will be treated as surplusage. Williams v. People, 26 Colo. 272, 57 P. 701 (1899).

When special prosecutor has plenary powers. The special prosecutor has the plenary powers of a district attorney only when he is acting within the scope of a valid court order granting him that power. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

Special prosecutor's actions exceeded scope of authority when he prosecuted a county commissioner for the sale of a stolen trailer to the county but the court order granting him investigating power was limited to budgetary irregularities. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

20-1-110. Intergovernmental cooperation and contracts. Every district attorney has the power to authorize and approve the participation of his judicial district in intergovernmental cooperative relationships concerning criminal prosecution and may enter into contracts on behalf of his judicial district for cooperation with other district attorneys concerning such prosecution and prosecution-related services; except that no district attorney shall be authorized or empowered by this section to obligate county funds which have not been appropriated by the affected boards of county commissioners in his judicial district.

Source: L. 77: Entire section added, p. 1033, § 1, effective July 1.

20-1-111. District attorneys may cooperate or contract - contents. (1) District attorneys may cooperate or contract with one another to provide any function or service lawfully authorized to each of the cooperating or contracting district attorneys, including the sharing of costs and the administration and distribution of moneys received for mandated costs.

(2) Any such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial and otherwise, of the contracting district attorneys.

(3) Any such contract may provide for the joint exercise of the function or service,

including the establishment of a separate legal entity to do so. The district attorneys may allocate up to five percent of the moneys received for mandated costs authorized by the general assembly for administrative expenses.

Source: L. 77: Entire section added, p. 1033, § 1, effective July 1. **L. 2002:** (1) and (3) amended, p. 761, § 13, effective July 1.

20-1-112. Financial audits. Each office of district attorney in each of the several judicial districts in the state of Colorado shall submit audited annual financial statements prepared in conformance with generally accepted accounting principles to the state auditor. The expenses of such audits shall be paid by each office of district attorney and shall be considered a necessary expense of maintaining his office for the transaction of his official business.

Source: L. 89: Entire section added, p. 934, § 1, effective April 4.

20-1-113. Reporting of criminal proceedings involving public school students. (1) On or before August 1, 2013, and on or before each August 1 thereafter, the district attorney of each judicial district, or his or her designee, shall report to the division of criminal justice created in section 24-33.5-502, C.R.S., information about offenses alleged to have been committed by a student that have occurred on school grounds, in a school vehicle, or at a school activity or sanctioned event within the judicial district during the preceding twelve months.

(2) The information reported by each district attorney pursuant to subsection (1) of this section shall include the number of offenses filed in court, including the total number of each type of such offenses, the disposition of each case, and the age, gender, school, and race or ethnicity of each student that the district attorney prosecuted.

(3) The information reported by each district attorney pursuant to subsection (1) of this section shall include, to the extent practicable and to the extent that such information is collected by the district attorney as of May 19, 2012:

(a) The number of offenses that were referred to the district attorney by a law enforcement agency and were not filed in court, including the total number of each type of such offenses; and

(b) The number of offenses for which the district attorney referred an offender to a juvenile diversion program or other alternative program, including the total number of each type of such offenses.

Source: L. 2012: Entire section added, (HB 12-1345), ch. 188, p. 745, § 30, effective May 19.

Cross references: (1) For the legislative declaration contained in the 2012 act adding this section, see section 21 of chapter 188, Session Laws of Colorado 2012.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2016, see sections 21 and 46 of chapter 188, Session Laws of Colorado 2012. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

PART 2

DEPUTIES, ASSISTANTS, AND EMPLOYEES

20-1-201. Deputies - chief deputies - staff. (1) (a) The district attorney in every judicial district is authorized to appoint such deputy district attorneys as he deems necessary to properly discharge the duties of his office, with the approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of a city and county affected, and such deputies shall hold their offices during the

pleasure of such district attorney. Such deputies shall not engage in the private practice of law nor receive any income from any private law firm.

(b) The district attorney in every judicial district that is composed in part of a county or counties of less than twenty-five thousand population may appoint, with the approval of the board of county commissioners of such county or counties, one or more part-time deputies to fulfill the duties of the district attorney which may arise in such county or counties. Such part-time deputies shall be entitled to receive as compensation for services rendered a sum as provided in section 20-1-203. Such part-time deputies may engage in the private practice of law.

(c) The district attorney in every judicial district is authorized to appoint such special deputy district attorneys as he deems necessary to properly discharge the duties of his office, and such special deputies shall hold their offices during the pleasure of such district attorney. Such special deputies shall receive no compensation for their services from the county or counties of the judicial district; except that such special deputies may be reimbursed their ordinary and necessary expenses, including travel. Such special deputies shall only be appointed from among those persons holding office as attorney general, deputy attorney general, assistant attorney general, or special assistant attorney general of the state of Colorado, or as district attorney, assistant district attorney, chief deputy district attorney, or deputy district attorney of another judicial district, or as United States attorney or assistant United States attorney for the district of Colorado, or as city attorney or assistant city attorney of a city and county in this state.

(d) To prosecute felony nonsupport actions pursuant to article 6 of title 14, C.R.S., the district attorney in every judicial district is authorized to appoint any attorney performing child support enforcement services for the county department of social services pursuant to article 13 of title 26, C.R.S., as a special deputy district attorney, whether such attorney is employed by the department directly, as a contractual agent for the department, or through the services of a private company under contract with the department. In no event shall a special deputy district attorney appointed pursuant to this subsection (1) be granted all of the powers enumerated in section 16-2.5-101, C.R.S. The powers granted by this appointment shall be limited to the prosecutions delineated in this subsection (1).

(2) The district attorney in every judicial district may designate and appoint chief deputy district attorneys, who shall be attorneys-at-law admitted to practice within this state. All chief deputy district attorneys shall hold office at the pleasure of the district attorney; except that no district attorney may appoint more than one chief deputy district attorney without the prior approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of the city and county affected. Such chief deputies shall not engage in the private practice of law nor receive any income from any private law firm.

(3) Before such deputy district attorneys, chief deputy district attorneys, or special deputy district attorneys enter upon the duties of their office, they shall file with the secretary of state the oath of office required by law to be filed by district attorneys and may be required, as the district attorney shall direct, to file a like bond as that required to be filed by district attorneys.

(4) The district attorney shall provide that any member of his staff be assigned regular duties or duty hours in accordance with the schedule of compensation paid such staff member.

Source: L. 1885: p. 176, § 1. **L. 1889:** p. 150, § 1. **R.S. 08:** § 2102. **C.L.** § 5983. **CSA:** C. 55, § 11. **CRS 53:** § 45-3-1. **C.R.S. 1963:** § 45-3-1. **L. 67:** p. 596, § 2. **L. 71:** p. 516, § 2. **L. 73:** p. 550, § 1. **L. 75:** (1) and (2) amended, pp. 656, 657, §§ 1, 2, effective July 1. **L. 79:** (1)(c) added, p. 769, § 1, effective May 18. **L. 80:** (1)(c) amended, p. 549, § 1, effective March 17. **L. 96:** (1)(d) added and (3) amended, p. 613, §§ 17, 18, effective July 1. **L. 2004:** (1)(d) amended, p. 1199, § 54, effective August 4.

Editor's note: The amendments made to this section in 1975 were in an act with a July 1, 1975, effective date, but the Governor did not sign the act until July 14, 1975.

Cross references: For oath and bond of deputies and chief deputies, see § 20-1-101.

ANNOTATION

This section is valid. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

Proper appointment of deputies presumed. Where the district court recognizes such deputies, it is to be presumed, in the absence of anything to the contrary, that such deputies were duly appointed and qualified. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

District attorney's subordinates hold office at his pleasure. Johns v. Powell, 35 Colo. App. 108, 532 P.2d 971, cert. dismissed, 190 Colo. 88, 543 P.2d 1261 (1975).

Part-time deputy district attorneys need not be residents of the counties they serve. Johns v. Powell, 35 Colo. App. 108, 532 P.2d 971, cert. dismissed, 190 Colo. 88, 543 P.2d 1261 (1975).

If board of county commissioners objects to district attorney's appointees, the burden is on the board to show that there is no reasonable necessity for the part-time deputies the district attorney seeks to employ. Johns v. Powell, 35 Colo. App. 108, 532 P.2d 971, cert. dismissed, 190 Colo. 88, 543 P.2d 1261 (1975).

Private practice of deputy was not disqualifying under former section. Pieramico v. People, 173 Colo. 276, 478 P.2d 304 (1970).

Enlargement of attorney general's prosecutorial power must be sought from general assembly. People ex rel. Brown v. District Court, 196 Colo. 359, 585 P. 2d 593 (1978).

Where assistant attorney general cannot serve as deputy district attorney. An assistant attorney general cannot serve for one case as deputy district attorney by special appointment of a district attorney whose district has a population over 25,000. People ex rel. Brown v. District Court, 196 Colo. 359, 585 P.2d 593 (1978).

Knowledge of deputies imputed to district attorney. Deputies and assistant district attorneys function only by virtue of the district attorney's authority, and their knowledge and official actions are imputed to the district attorney for purposes of the compulsory joinder statute. Corr v. District Court, 661 P.2d 668 (Colo. 1983).

Deputy district attorneys are not "every other officer" for purposes of art. XII, § 9, because they are appointed not elected; thus, subsection (3) controls. Subsection (3) requires that deputy district attorneys must file their oaths with the secretary of state. Leske v. Golder, 124 P.3d 863 (Colo. App. 2005).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-202. Powers of deputies. The deputy has all the powers of the district attorney.

Source: L. 1885: p. 176, § 2. **R.S. 08:** § 2103. **C.L.** § 5984. **CSA:** C. 55, § 12. **CRS 53:** § 45-3-2. **C.R.S. 1963:** § 45-3-2.

ANNOTATION

Proper appointment of deputy presumed. Where the district court recognizes such deputies, it is to be presumed, in the absence of anything to the contrary, that such deputies were duly appointed and qualified. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

Matters within knowledge of deputy district attorneys are imputed to the district attorney. Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981).

20-1-203. Compensation of deputy, chief deputy, and assistant district attorneys. Compensation for all deputy, chief deputy, part-time deputy, assistant, and part-time assistant district attorneys shall be fixed by the district attorney with the approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of a city and county affected, and each county comprising such judicial district shall pay such deputies, chief deputies, assistants, and part-time assistants salaries in the proportion which the population of such county bears to the whole population of such judicial district; except that part-time deputies shall be paid by the county or counties they serve.

Source: L. 1891: p, 308, § 3. **L. 1899:** p. 333, § 3. **L. 03:** p. 207, § 1. **R.S. 08:** § 2584. **L. 15:** p. 244, § 1. **C.L.** § 7949. **L. 33:** p. 435, § 1. **CSA:** C. 66, § 98. **L. 41:**

p. 409, § 2. **L. 49:** p. 406, § 1. **CRS 53:** § 45-3-3. **L. 55:** p. 290, § 3. **L. 59:** p. 378, § 2. **C.R.S. 1963:** § 45-3-3. **L. 67:** pp. 597, 599, §§ 3, 6. **L. 71:** p. 517, § 3. **L. 73:** p. 550, § 2. **L. 75:** Entire section R&RE, p. 657, § 3, effective July 1.

Editor's note: The amendments made to this section in 1975 were in an act with a July 1, 1975, effective date, but the Governor did not sign the act until July 14, 1975.

ANNOTATION

Private practice of deputy was nonprejudicial under former § 20-1-201. Pieramico v. People, 173 Colo. 276, 478 P.2d 304 (1970).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-204. Powers of chief deputy. The chief deputy district attorney has all the powers of the district attorney.

Source: L. 09: p. 343, § 2. **C.L.** § 5986. **CSA:** C. 55, § 14. **L. 41:** p. 387, § 5. **CRS 53:** § 45-3-11. **C.R.S. 1963:** § 45-3-7.

20-1-205. Assistant district attorneys. (1) (a) In every judicial district, the district attorney is authorized to appoint an assistant district attorney who shall be an attorney-at-law admitted to practice within this state and who shall actually have practiced law not less than two years.

(b) Repealed.

(c) The district attorney in every judicial district having a population not exceeding fifty thousand may appoint one part-time assistant district attorney. Such part-time assistant may engage in the private practice of law.

(2) Every such assistant district attorney, before entering upon the duties of office, shall file with the secretary of state the oath of office required by law to be filed by district attorneys and shall hold office at the pleasure of the district attorney by whom he is appointed. Such assistant district attorney, before entering upon the duties of office, may be required, as the district attorney may direct, to file like bond as that required to be filed by district attorneys.

(3) The salaries authorized by subsection (1) of this section shall be paid monthly and shall be paid by the counties comprising such judicial district out of the ordinary revenues of such counties. Every county shall pay in proportion as the population of such county bears to the whole population of such judicial district, according to the latest federal census.

Source: L. 33: p. 433, § 1. **CSA:** C. 55, § 10. **L. 41:** p. 384, § 1. **L. 51:** p. 349, § 1. **CRS 53:** § 45-3-5. **L. 55:** p. 290, § 4. **L. 59:** p. 379, § 3. **C.R.S. 1963:** § 45-3-8. **L. 67:** pp. 598, 599, §§ 4, 6. **L. 71:** p. 517, § 4. **L. 73:** p. 551, § 3. **L. 75:** (1)(a) and (1)(c) amended and (1)(b) repealed, p. 657, §§ 4, 5, effective July 1.

Editor's note: (1) The amendments made to this section in 1975 were in an act with a July 1, 1975, effective date, but the Governor did not sign the act until July 14, 1975.

(2) The reference in subsection (3) to "salaries authorized by subsection (1) of this section" is to subsection (1) as it existed prior to the 1975 amendment to this section. For present provisions as to compensation of assistant district attorneys, see § 20-1-203.

ANNOTATION

Applied in Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

20-1-206. Powers. All matters and things required or which may be done by the district attorney may be done with like force and effect by his assistant under the direction and control of the district attorney, and he has all the powers of the district attorney by whom he was appointed; except that such acts shall all be done in the name of the district attorney.

Source: L. 19: p. 294, § 2. **C.L.** § 5988. **CSA:** C. 55, § 16. **CRS 53:** § 45-3-7. **C.R.S. 1963:** § 45-3-10.

ANNOTATION

Knowledge of staff imputed to district attorney. Knowledge of the chief deputy and of the chief investigator for the district attorney is knowledge to the entire office and the district attorney will be charged with that knowledge. DeLuzio v. People, 177 Colo. 389, 494 P.2d 589 (1972); Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981).

Applied in People v. Castro, 657 P.2d 932 (Colo. 1983).

20-1-207. Powers of assistant. The assistant district attorney has all the powers of the district attorney.

Source: L. 1893: p. 236, § 2. **R.S. 08:** § 2101. **C.L.** § 5982. **CSA:** C. 55, § 9. **L. 41:** p. 387, § 3. **CRS 53:** § 45-3-9. **C.R.S. 1963:** § 45-3-11.

20-1-208. Special officers - stenographers - salaries. (1) The district attorney of each judicial district in this state having more than one hundred thousand population, as shown by the last decennial census, except the city and county of Denver, is authorized by and with the consent of the district judges of the judicial district to appoint one or two special officers, each at an annual salary to be determined by such district judges of not to exceed five thousand dollars, and actual and necessary expenses; and in his district he is authorized by and with the consent of the district judges of the judicial district to appoint a stenographer at an annual salary to be determined by such district judges of not to exceed three thousand dollars. Said salaries shall be paid monthly and shall be borne and paid monthly by the several counties comprising said judicial districts. Each county shall pay its proportionate part of said salaries as the population of such county bears to the whole population of the judicial district, according to the last preceding decennial census.

(2) The district attorney of each judicial district in the state having a population of less than one hundred thousand as shown by the last decennial census is authorized to appoint a special investigator, a stenographer, and such other technical and professional assistants as are necessary to assist him in properly transacting all of the business of his office. The salary and compensation for such employees and assistants shall be fixed by such district attorney in an amount commensurate with the services performed and the duties and responsibilities of such employees. The salaries of such persons so appointed shall be paid by the various counties within the judicial district, each county paying its proportionate part of said salaries as the population of such county bears to the whole population of such judicial district, according to the last preceding decennial census. Such budget shall be approved by the boards of county commissioners.

Source: L. 07: p. 370, § 2. **R.S. 08:** § 2105. **C.L.** § 5990. **CSA:** C. 55, § 18. **L. 47:** p. 394, § 1. **L. 51:** p. 353, § 1. **L. 52:** p. 104, § 1. **L. 53:** p. 254, § 1. **CRS 53:** § 45-3-14. **L. 57:** p. 339, § 1. **C.R.S. 1963:** § 45-3-12.

ANNOTATION

Purpose of section. The general assembly intended that district attorney's offices should be staffed with such employees as are reasonably necessary to perform the duties incumbent on the district attorney. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

The term "stenographer" as used in this section is descriptive and not exclusive. Johnson

v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

Review of hiring and salary set by district attorney. It would be an unreasonable interpretation of subsection (2) to declare that the county commissioners must rubber-stamp the hiring of an employee or the salary of the employees appointed by the district attorney. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

The burden is upon the board of county commissioners, if they choose to challenge the wisdom of the district attorney's decision to employ personnel to staff his office in accordance with subsection (2), to show that there is no reasonable necessity for such employment and that in employing personnel the district attorney acted arbitrarily, capriciously, and abused his discretion in making such appointment and in setting the salary for such appointed employee. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

Position of clerk-typist approved. From the record the supreme court finds that the county commissioners failed to sustain their burden of proof and did not establish that the district attorney acted arbitrarily and capriciously in appointing a clerk-typist and in fixing her salary. The district attorney of a district having a population of less than 100,000 under the provisions of subsection (2) can hire a clerk-typist, in addition to a stenographer. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

20-1-209. Investigators and other employees. (1) The district attorney of each judicial district is authorized to appoint a chief investigator and such other investigators as he may deem necessary in the conduct of his office and such stenographers, office employees, and other technical and professional assistants as are necessary to properly transact the business of his office. The salary and compensation in each instance for such employees and assistants shall be fixed by such district attorney in an amount commensurate with the services performed and the duties and responsibilities of such employees, subject to the approval of the board of county commissioners of the county or the city council of a city and county affected.

(2) The salaries of any personnel so appointed shall be paid by the various counties within the judicial district, each county paying its proportionate part of said salaries as the population of such county bears to the whole population of such judicial district, according to the last preceding federal census.

Source: L. 45: p. 314, § 2. **CSA:** C. 55, § 15 (1). **CRS 53:** § 45-3-15. **C.R.S. 1963:** § 45-3-13. **L. 67:** p. 598, § 5.

ANNOTATION

District court has power to appoint counsel to assist district attorney in criminal trials, the exercise of such power not being prohibited by statute, and belonging to the court independent of any express statutory grant or sanction. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

The exercise of the power to appoint counsel to assist the district attorneys is of course discretionary with the court, and this discretion is subject to review in the appellate tribunals as in other cases. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

Compensation. Where counsel was appointed by the district court to assist the district attorney in the prosecution of a criminal case, an allowance by the court of compensation to such counsel for his services is at least prima facie evidence of the value of the services. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

District attorney not bound by union agreements entered by county. The district attorney is a state officer serving in a particular judicial district, independent of the county government, with authority to hire and fire his own employees, and since the district attorney is not an agent or employee of the county, union agreements entered into by the county are not binding upon him. Anderson v. County of Adams, 41 Colo. App. 441, 592 P.2d 3 (1978).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-210. Prohibition of practice of law - associates - members of district attorney's staff. No attorney-at-law practicing law in the state of Colorado who is a member of a private law firm with which a district attorney, assistant district attorney, or deputy district attorney is associated may defend any person or persons who are being prosecuted by a

salaried staff member of the office of said district attorney; nor may any such salaried staff member defend any person or persons who are being prosecuted in any judicial district in the state of Colorado.

Source: L. 59: p. 382, § 4. **CRS 53:** § 45-3-16. **C.R.S. 1963:** § 45-3-14. **L. 71:** p. 518, § 5.

PART 3

COMPENSATION AND EXPENSES

20-1-301. Compensation of district attorneys. (1) (a) (I) Commencing January 1, 1997, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than sixty-seven thousand dollars per annum.

(II) Effective January 1, 2009, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred thousand dollars per annum.

(III) Effective January 1, 2010, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred ten thousand dollars per annum.

(IV) Effective January 1, 2011, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred twenty thousand dollars per annum.

(V) Effective January 1, 2012, and for each year thereafter, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred thirty thousand dollars per annum.

(b) Any amount in excess of the compensation amount set pursuant to paragraph (a) of this subsection (1) shall be set by the board or boards of county commissioners of the county or counties comprising the judicial district or the city council of the city and county of Denver for the second judicial district.

(c) During the regular legislative session commencing January, 2012, and every fourth legislative session thereafter, the judiciary committees of the house of representatives and the senate, or any successor committees, shall review the compensation of elected district attorneys and make recommendations, if appropriate, to the general assembly regarding the compensation of elected district attorneys.

(2) A district attorney shall not engage in the private practice of law, nor shall he receive any income from any private law firm.

Source: L. 48, Ex. Sess.: p. 21, §§ 1, 2. **CSA:** C. 66, § 52(4). **CRS 53:** § 45-2-1. **L. 55:** p. 289, § 1. **L. 59:** pp. 378, 380, §§ 1, 4. **C.R.S. 1963:** § 45-2-1. **L. 67:** pp. 596, 599, §§ 1, 6. **L. 72:** p. 295, § 2. **L. 75:** (1) amended, p. 659, § 1, effective June 26. **L. 76:** (1) amended, p. 592, § 3, effective July 1. **L. 80:** (1) amended, p. 577, § 3, effective July 1. **L. 84:** (1) amended, p. 577, § 1, effective May 9. **L. 95:** (1) amended, p. 580, § 1, effective May 22. **L. 2004:** (1) amended, p. 194, § 12, effective August 4. **L. 2007:** (1) amended, p. 1609, § 1, effective May 31.

ANNOTATION

Once salary ratified, county commissioners cannot reduce during term of office. By paying the plaintiff a certain sum of money, the county commissioners ratified an annual salary, and once they had ratified the salary paid at the commencement of the plaintiff's term of office, the county commissioners were without the power to reduce the salary during the plaintiff's four-year term. Tisdel v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980).

Trial court may review budgeting and taxing actions of board of county commissioners, but must give great deference to the board's discretionary acts. Decisions by the board in these areas may be nullified only where the trial court determines that the board abused their discretion by acting arbitrarily or unreasonably. Johns v. Miller, 42 Colo. App. 97, 594 P.2d 590 (1979).

20-1-302. Expenses. Except as otherwise specifically provided, the district attorneys of each judicial district in the state of Colorado shall be entitled to collect and receive at the end of each month, of and from the respective counties in the district attorney's judicial district, the necessary expenses of maintaining an office for the transaction of official business, which expenses shall be borne by the various counties in the judicial district, each in the proportion that the population of such county bears to the population of the whole judicial district, according to the last preceding population estimate that is prepared before May 1 of the current year by the division of planning in the department of local affairs pursuant to section 24-32-204, C.R.S. With the agreement of all of the boards of county commissioners of the judicial district, the funding allocation provisions of this section may be modified. Nothing in part 2 of this article or this part 3 shall prohibit any municipality, county, or government entity from agreeing to fund programs, projects, personnel, or salaries that are in addition to the funds provided for the reasonable and necessary expenses of the district attorney with the agreement of the relevant board of county commissioners.

Source: L. 41: p. 411, § 2. **CSA:** C. 66, § 93. **CRS 53:** § 45-2-4. **C.R.S. 1963:** § 45-2-4. **L. 95:** Entire section amended, p. 188, § 1, effective April 13. **L. 2004:** Entire section amended, p. 1884, § 1, effective June 4.

ANNOTATION

This section contemplates the maintenance of but one office of the district attorney, in each county of his district, and the district attorney himself is authorized to contract, and recover from the county, the attendant necessary expenses. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

And not separate offices for assistants and deputies. It would be unreasonable to hold that this section contemplates that the district attorney, his assistant, and deputies may each maintain separate offices, as such officers, in each county of a judicial district, upon the claim that the expense is necessarily incurred in the performance of official duties imposed by law. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

Budget proportioned by county. This section specifically provides for proportional payment by each county in a judicial district of the necessary expense of maintenance of an office by the district attorney for the transaction of official business therein. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

Under this section the district attorney is entitled to the reasonable and necessary expense of maintaining an office, including the fees of a stenographer. The expense of the office is to be apportioned among the different counties of the district. Bd. of Comm'rs v. Walker, 66 Colo. 312, 181 P. 195 (1919).

This section requires that the budget submitted by the district attorney to each of the counties in the district be prorated on the basis of population. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-303. District attorneys allowed necessary expenses. Except as otherwise specifically provided, the district attorney of each judicial district in the state of Colorado, and each of his assistants and deputies, shall be allowed to collect and receive from each of the counties in his district the expenses necessarily incurred in the discharge of his official duties for the benefit of such county.

Source: L. 07: p. 371, § 1. **R.S. 08:** § 2107. **C.L.** § 5992. **CSA:** C. 55, § 20. **CRS 53:** § 45-2-5. **C.R.S. 1963:** § 45-2-5.

ANNOTATION

This section relates generally to expenses necessarily incurred by the district attorney, his assistant, and deputies, in the discharge of official duties. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

Expenses arising from a lawsuit based on conduct of the district attorney within performance of his duties and scope of his employment are contemplated by this section. Colo. Counties Cas. & Prop. Pool v. Bd. of County Comm'rs, 51 P.3d 1100 (Colo. App. 2002).

Judicial notice is taken that the aid of a stenographer is indispensable to the efficient discharge of duties like those of the district

attorney. Bd. of Comm'rs v. Walker, 66 Colo. 312, 181 P. 195 (1919).

Expert witnesses may recover for their services. Expert witnesses whose services are procured by the district attorney and utilized in the prosecution of a criminal case were held entitled to recover the reasonable value thereof from the county under the provisions of this section. Crane v. Bd. of County Comm'rs, 80 Colo. 230, 250 P. 388 (1926).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-304. District attorney and employees authorized to receive benefits. (Repealed)

Source: L. 63: p. 343, § 1. **C.R.S. 1963:** § 45-2-7. **L. 76:** Entire section repealed, p. 637, § 2, effective January 11, 1977.

20-1-305. Benefits not considered compensation or increase in emoluments. (Repealed)

Source: L. 63: p. 343, § 2. **C.R.S. 1963:** § 45-2-8. **L. 76:** Entire section repealed, p. 637, § 2, effective January 1, 1977.

20-1-306. Salaries paid from state and county funds. The salaries of district attorneys of the several judicial districts of the state as set forth in section 20-1-301 (1) (a) shall be paid in twelve equal monthly installments of which the state shall contribute eighty percent annually and the counties making up each district the balance, each county's payment to be in the same proportion as provided in section 20-1-302.

Source: L. 72: p. 295, § 3. **C.R.S. 1963:** § 45-2-9. **L. 75:** Entire section amended, p. 659, § 2, effective June 26. **L. 76:** Entire section amended, p. 592, § 3, effective July 1. **L. 80:** Entire section amended, p. 577, § 4, effective July 1. **L. 84:** Entire section amended, p. 577, § 2, effective May 9. **L. 95:** Entire section amended, p. 188, § 2, effective April 13; entire section amended, p. 580, § 2, effective May 22. **L. 2004:** Entire section amended, p. 195, § 13, effective August 4. **L. 2007:** Entire section amended, p. 1610, § 2, effective May 31.

Editor's note: Amendments to this section in House Bill 95-1215 and House Bill 95-1340 were harmonized.

20-1-307. Social security coverage. The office of district attorney, including the district attorney and the employees of each office within each judicial district, is a juristic entity as described in section 24-53-101, C.R.S. Each office of district attorney shall enter into an agreement with the director of the division of unemployment insurance in the department of labor and employment for the purpose of including the district attorney and the employees of the district attorney's office under the state's federal-state social security coverage agreement with the secretary of the United States department of health and human services pursuant to section 24-53-104, C.R.S.

Source: L. 75: p. 661, § 1, effective March 21. **L. 87:** Entire section amended, p. 1092, § 7, effective July 1. **L. 2012:** Entire section amended, (HB 12-1120), ch. 27, p. 107, § 20, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Cross references: For changes relating to the structure of the United States department of health, education, and welfare, see Public Law 96-88, Title III, section 301, and Title V, section 509, Oct. 17, 1979, 93 Stat. 677, 695.

ANNOTATION

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-308. Compensation and expenses - special prosecutors. (1) The compensation and expenses of special prosecutors appointed pursuant to section 13-1-128 or 16-5-209, C.R.S., or section 20-1-107 shall be paid as follows:

(a) When the special prosecutor is a full-time district attorney, assistant district attorney, or deputy district attorney, the county or counties in the judicial district for which the appointment is made shall pay only the ordinary and necessary expenses, including travel, of the special prosecutor, as the judge of the court, which has jurisdiction of the offense being prosecuted, may direct.

(b) In all other cases, the county or counties in the judicial district for which the appointment is made shall pay only the ordinary and necessary expenses, including travel, of the special prosecutor as directed by the judge in addition to a fee for the services of the special prosecutor, which fee shall be approved by the judge but which may not exceed the amount of salary payable to a retired judge sitting in that court or district pursuant to section 5 (3) of article VI of the state constitution.

Source: L. 77: Entire section added, p. 859, § 3, effective May 24. **L. 87:** IP(1) amended, p. 539, § 2, effective July 1.

TITLE 21

STATE PUBLIC DEFENDER

TITLE 21

STATE PUBLIC DEFENDER

Art. 1. State Public Defender, 21-1-101 to 21-1-106.
Art. 2. Alternate Defense Counsel, 21-2-101 to 21-2-107.

ARTICLE 1

State Public Defender

Editor's note: This article was numbered as article 21 of chapter 39, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

21-1-101. Public defender - policy - commission.
21-1-102. State public defender - deputies and employees - regional offices.
21-1-103. Representation of indigent persons.
21-1-104. Duties of public defender.
21-1-105. Appointment of other attorney or investigator in place of public defender - contracts for services. (Repealed)
21-1-106. Recoupment of fees and costs.

21-1-101. Public defender - policy - commission. (1) The office of state public defender is hereby created and established as an agency of the judicial department of state government. The general assembly hereby declares that the state public defender at all times shall serve his clients independently of any political considerations or private interests, provide legal services to indigent persons accused of crime that are commensurate with those available to nonindigents, and conduct the office in accordance with the Colorado rules of professional conduct and with the American bar association standards relating to the administration of criminal justice, the defense function.

(2) The Colorado supreme court shall provide for the appointment, terms, and procedure for a five-member public defender commission, no more than three of whom shall be from the same political party. Three of the members of the commission shall be attorneys admitted to practice law in this state, and two shall be citizens of Colorado not admitted to practice law in this state. In making appointments to the commission, the supreme court shall consider place of residence, sex, race, and ethnic background. No member of the commission shall be at any time a judge, prosecutor, public defender, or employee of a law enforcement agency.

(3) The public defender commission shall appoint and discharge, for cause, the state public defender, who shall be appointed to serve a term of five years and shall serve until his successor is appointed and qualified. He may be reappointed for one or more subsequent five-year terms. Vacancies in the office shall be filled by the public defender commission for the remainder of the unexpired term. The state public defender serving as such on July 1, 1979, shall continue to serve his current term.

(4) Members of the public defender commission shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(5) Any expenses incurred for the commission shall be paid from the general operating budget of the office of the state public defender.

Source: L. 69: R&RE, p. 255, § 30. **C.R.S. 1963:** § 39-21-1. **L. 79:** Entire section R&RE, p. 770, § 1, effective July 1. **L. 99:** (1) amended, p. 632, § 52, effective August 4.

ANNOTATION

Law reviews. For note, "Colorado's Defender Act — Has the Time Arrived to Implement its Provisions?", see 36 U. Colo. L. Rev. 235 (1964). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L. J. 82 (1970). For note, "The Right to Effective Counsel: A Case Study of the Denver Public Defender", see 50 Den. L. J. 45 (1973).

Appointment within ambit of constitutional provision. The Colorado constitution allows the supreme court to appoint "such . . . personnel as the court may deem necessary to aid in the administration of the courts". Certainly, the general assembly's determination that the state public defender be appointed by the Colorado supreme court is within the ambit of this constitutional provision. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

And is not violative of due process or separation of powers. The office of the state public defender is not unconstitutional and does not violate the separation of powers doctrine or deny defendants a trial in accord with the due process clause of the state and federal constitutions. Although the state public defender is appointed and his compensation is fixed by the Colorado supreme court, this statutory scheme does not create such a nexus as would violate the due process provisions, the separation of powers doctrine, or the right a defendant has to a fair trial. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

Nor do statutory protections violate separation of powers. The statutory system in Colorado, which protects the public defender's office with certain statutory safeguards, in no way violates the principles of separation of powers or the other guarantees of due process. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

Office of state public defender is clearly necessary to advance sound administration of the courts in Colorado. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

The public defender's duties and responsibilities toward his clients are identical to any other Colorado attorney in all respects whether privately retained or court appointed. Espinoza v. Rogers, 470 F.2d 1174 (10th Cir. 1972).

An attorney does not act under color of state law simply because he has accepted employment as a Colorado public defender. Espinoza v. Rogers, 470 F.2d 1174 (10th Cir. 1972).

21-1-102. State public defender - deputies and employees - regional offices. (1) The state public defender shall have been licensed to practice law in this state for at least five years prior to his appointment, and he shall devote full time to the performance of his duties and shall not engage in the private practice of law.

(2) The compensation of the state public defender shall be fixed by the general assembly and may not be reduced during the term of his appointment.

(3) The state public defender shall employ and fix the compensation of a chief deputy public defender, deputy state public defenders, investigators, and any other employees necessary to discharge the functions of the office. All salaries shall be reviewed and approved by the Colorado supreme court. The chief deputy public defender and deputy public defenders shall serve, on a full-time basis, at the pleasure of the state public defender and shall not otherwise engage in the practice of law.

(4) The state public defender shall establish such regional offices as he deems necessary to carry out his duties under this article.

Source: L. 69: R&RE, p. 255, § 30. **C.R.S. 1963:** § 39-21-2. **L. 79:** Entire section R&RE, p. 771, § 2, effective July 1.

ANNOTATION

No conflict of interest in private representation of defendant by public defender. Since employment in a public defender's office is not the type of public employment contemplated in Ethical Consideration 9-3 and Disciplinary Rule 9-101(B) of the code of professional responsibility, no conflict of interest can be perceived in the representation of a defendant by a deputy public defender and the subsequent representation by the same attorney in a private capacity of the defendant in the same case. Coles, Manter & Watson v. Denver Dist. Court, 177 Colo. 210, 493 P.2d 374 (1972).

21-1-103. Representation of indigent persons. (1) The state public defender shall represent as counsel, without charge except as provided in subsection (3) of this section, each indigent person who is under arrest for or charged with committing a felony if:

(a) The defendant requests it and he complies with subsection (3) of this section; or

(b) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. When appointed by the court, the office of the state public defender shall be limited to defending the indigent person and shall not be appointed to act as advisory counsel. The court shall not appoint a public defender to represent a defendant if such defendant does not fall within the fiscal standards or guidelines established by the supreme court for appointment of public defenders.

(2) Except as provided in section 16-5-501, C.R.S., the state public defender shall represent indigent persons charged in any court with crimes which constitute misdemeanors; juveniles upon whom a delinquency petition is filed or who are in any way restrained by court order, process, or otherwise; persons held in any institution against their will by process or otherwise for the treatment of any disease or disorder or confined for the protection of the public; and such persons charged with municipal code violations as the state public defender in his or her discretion may determine, subject to review by the court if:

(a) The indigent person or his parent or legal guardian in delinquency or other actions under article 2 of title 19, C.R.S., requests it and complies with subsection (3) of this section; or

(b) The court, on its own motion or otherwise, so orders or requests and the defendant or his or her parent or legal guardian in delinquency or other actions under article 2 of title 19, C.R.S., does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. The court shall not appoint a public defender to represent the defendant, or his or her parent or legal guardian, if such person does not fall within the fiscal standards or guidelines established by the supreme court.

(3) The determination of indigency shall be made by the state public defender, subject to review by the court. When a defendant or, if applicable, the defendant's parent or legal guardian requests representation by a public defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A nonrefundable processing fee of twenty-five dollars shall be paid by the applicant if the court-appointed counsel enters an appearance based upon the application. The fee shall be assessed at the time of sentencing, or adjudication, if sentencing or adjudication occurs, or upon other final disposition of the case; except that the court may, at sentencing, adjudication, or other final disposition, waive the fee if the court determines, based upon the financial information submitted by the party being represented by the court-appointed counsel, that the person does not have the financial resources to pay the fee. Before the court appoints a public defender based on said application, the court shall advise the defendant or, if applicable, the defendant's parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the public defender's office. Processing fees collected pursuant to this subsection (3) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(4) Nothing is this section shall be construed to authorize the public defender to represent or advise any person who is physically outside the state of Colorado and who has not made a court appearance in the pending matter in the state of Colorado.

Source: L. 69: R&RE, p. 255, § 30. **C.R.S. 1963:** § 39-21-3. **L. 81:** (2) amended, p. 929, § 3, effective September 1. **L. 81:** (4) added, p. 924, § 2, effective May 26. **L. 88:** (1)(a), (1)(b), (2)(a), (2)(b), and (3) amended, p. 665, § 6, effective July 1. **L. 90:** IP(1) and (3) amended, p. 1038, § 1, effective July 1. **L. 92:** (2)(a) and (2)(b) amended, p. 2176, § 31, effective June 2; (3) amended, p. 466, § 3, effective July 1. **L. 2000:** (1)(b), IP(2), and (2)(b) amended, p. 1480, § 5, effective August 2. **L. 2004:** (3) amended, p. 725, § 1, effective August 4.

Cross references: For appointment of counsel for indigent persons in insanity or incompetency proceedings, see § 16-8-119.

ANNOTATION

Public defender provided for proceedings carrying criminal sanctions. The general assembly, in establishing the public defender's office, looked to the fact of incarceration and provided for court appointed counsel in juvenile delinquency proceedings, in civil commitment and similar proceedings, and in municipal code violation cases, all of which historically were civil in nature but which carry criminal sanctions. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Public defender appointed when requested by defendant or ordered by court. Public defender is only appointed when requested by defendant or ordered by court. Therefore, defendant's right to counsel was not violated when he continued to answer questions when public defender was present and desired to talk with him, but defendant had waived presence of counsel and had not requested counsel. People v. Page, 907 P.2d 624 (Colo. App. 1995).

Defendant who becomes indigent during course of criminal proceedings is entitled to discharge his or her retained counsel and then obtain appointed counsel. People v. Munsey, 232 P.3d 113 (Colo. App. 2009).

Trial court may, within its discretion, decline to appoint alternate defense counsel to investigate claims for the ineffective assistance of counsel in a prior case. People v. Mills, 163 P.3d 1129 (Colo. 2007).

If defendant wants the state to pay the costs of his attorney and supporting services, his only choice is to be represented by the public defender, or in the case of a conflict, a state-appointed alternate defense counsel. People v. Cardenas, 62 P.3d 621 (Colo. 2002).

Defendant's ownership of a home in foreclosure and a luxury sport utility vehicle is not in itself sufficient to establish nonindigency. People v. Munsey, 232 P.3d 113 (Colo. App. 2009).

No constitutional right to postconviction counsel exists; however, a limited statutory right exists. The statutory right to postconviction counsel is neither automatic nor unlimited. It is limited to cases where a defendant's Crim. P. 35(c) petition is not wholly unfounded and has arguable merit, as determined by the court and the state public defender's office. Silva v. People, 156 P.3d 1164 (Colo. 2007).

If postconviction counsel is required according to the limited statutory right, that counsel must provide effective assistance as measured by the two-pronged Strickland v. Washington test. Silva v. People, 156 P.3d 1164 (Colo. 2007).

A limited statutory right to counsel exists for a Crim. P. 35 hearing pursuant to this section and § 21-1-104, and the waiver of such right to counsel must be made voluntarily but need not be knowingly and intelligent. People v. Duran, 757 P.2d 1096 (Colo. App. 1988).

There is a limited statutory right to counsel in post-conviction proceedings when the allegations are factually sufficient to warrant a hearing. People v. Hickey, 914 P.2d 377 (Colo. App. 1995).

But, defendant is entitled to conflict-free counsel when trial court orders appointment of counsel to assist defendant in motion under Crim. P. 35 based upon allegations of ineffective assistance of counsel in guilty plea. Supreme court concerned that public defender did not file motion to withdraw in Crim. P. 35 case in which defendant alleged as grounds for motion prior ineffective assistance of appointed public defender during prior criminal proceeding. Murphy v. People, 863 P.2d 301 (Colo. 1993).

A limited right to counsel exists under this section and § 21-1-104 for assistance in a hearing on a motion for a new trial under Crim. P. 33. However, the trial court properly denied the defendant's request for assistance and the request for a hearing where defendant's Crim. P. 33 motion failed to allege particularized facts supporting his assertion of ineffective assistance of counsel. People v. Esquivel-Alaniz, 985 P.2d 22 (Colo. App. 1999).

Trial court did not err in failing to appoint counsel to represent defendant because the court properly concluded from the record that defendant was not entitled to relief and, therefore, was not required to hold a hearing on the motion. People v. Fernandez, 53 P.3d 773 (Colo. App. 2002).

No authority for appointment in civil contempt proceeding. There is no statutory authority for appointment of the public defender in civil contempt proceedings. Vela v. District Court, 664 P.2d 243 (Colo. 1983).

No authority for appointment in criminal contempt citations. The public defender's duties are limited by statute and the general assembly clearly did not intend to grant the public defender authority to prosecute criminal contempt citations. Groves v. Dist. Ct. for 17th Jud. Dist., 806 P.2d 947 (Colo. 1991).

Review of pro se appeals. In view of the right of an indigent defendant to have counsel appointed to prosecute an appeal, the supreme court will not consider unintelligible petitions and motions which have no legal significance

and which do not meet the requirements of established procedures in appellate practice. In re Griffin, 152 Colo. 347, 382 P.2d 202 (1963).

Information given public defender regarding indigency not confidential. Since the determination of indigency is subject to judicial review, information given the public defender in this regard cannot be considered confidential. People v. Lambert, 40 Colo. App. 84, 572 P.2d 847 (1977).

Indigent defendants are entitled to continued and effective representation by court-appointed counsel in the absence of a demonstrable basis in fact and law to terminate that appointment, and therefore the practice of subpoenaing the accused's attorney as a prosecution witness must be carefully monitored. Williams v. District Court, 700 P.2d 549 (Colo. 1985).

Conviction reversed where defendant's right to counsel was violated when trial court failed to appoint public defender. Despite facts in the record indicating that the defendant might be eligible for court-appointed counsel, the trial court accepted the public defender's denial of indigency without conducting its own review and making findings to support a determination for itself on the issue of indigency. People v. Steinbeck, 186 P.3d 54 (Colo. App. 2007).

Although a trial court's determination regarding indigency is reviewed for abuse of discretion, such determination is subject to careful scrutiny because it involves a fundamental constitutional right. People v. Steinbeck, 186 P.3d 54 (Colo. App. 2007).

Applied in Brown v. District Court, 189 Colo. 469, 541 P.2d 1248 (1975); Godbold v. Wilson, 518 F. Supp. 1265 (D. Colo. 1981).

21-1-104. Duties of public defender. (1) When representing an indigent person, the state public defender, only after the conditions of section 21-1-103 have been met, shall:

(a) Counsel and defend him, whether he is held in custody, filed on as a delinquent, or charged with a criminal offense or municipal code violation at every stage of the proceedings following arrest, detention, or service of process; and

(b) Prosecute any appeals or other remedies before or after conviction that the state public defender considers to be in the interest of justice, except as limited in subsection (3) of this section.

(2) In no case, however, shall the state public defender be required to prosecute any appeal or other remedy unless the state public defender is satisfied first that there is arguable merit to the proceeding.

(3) In order to expedite death penalty appeals, state moneys shall not be used to prosecute any appeal on behalf of the defendant in any class 1 felony case where the death penalty has been imposed that is not an appeal as of right in state court. In addition, in any class 1 felony case where the death penalty has been imposed, state moneys shall not be used to prosecute any federal habeas corpus proceeding on behalf of the petitioner, unless the petitioner is seeking to prevent extradition. For purposes of this subsection (3), "appeal as of right" means a direct appeal on behalf of the defendant of the validity of the underlying conviction and the propriety of the sentence and a motion for postconviction relief properly brought by the defendant in accordance with rule 35 of the Colorado rules of criminal procedure and any appeal on behalf of the defendant of the denial of such motion.

Source: L. 69: R&RE, p. 256, § 30. **C.R.S. 1963:** § 39-21-4. **L. 81:** IP(1) amended, p. 924, § 3, effective May 26. **L. 94:** (1)(b) amended and (3) added, p. 1475, § 4, effective July 1.

ANNOTATION

A limited statutory right to counsel exists for a Crim. P. 35 hearing pursuant to § 21-1-103 and this section, and the waiver of such right to counsel must be made voluntarily but need not be knowingly and intelligent. People v. Duran, 757 P.2d 1096 (Colo. App. 1988).

There is a limited statutory right to counsel in post-conviction proceedings when the allegations are factually sufficient to warrant a hearing. People v. Hickey, 914 P.2d 377 (Colo. App. 1995).

A limited right to counsel exists under this section and § 21-1-103 for assistance in a hearing on a motion for a new trial under Crim. P. 33. However, the trial court properly denied the defendant's request for assistance and the request for a hearing where defendant's Crim. P. 33 motion failed to allege particularized

facts supporting his assertion of ineffective assistance of counsel. People v. Esquivel-Alaniz, 985 P.2d 22 (Colo. App. 1999).

No constitutional right to postconviction counsel exists; however, a limited statutory right exists. The statutory right to postconviction counsel is neither automatic nor unlimited. It is limited to cases where a defendant's Crim. P. 35(c) petition is not wholly unfounded and has arguable merit, as determined by the court and the state public defender's office. Silva v. People, 156 P.3d 1164 (Colo. 2007).

Trial court did not err in failing to appoint counsel to represent defendant because the court properly concluded from the record that defendant was not entitled to relief and, therefore, was not required to hold a hearing on the motion. People v. Fernandez, 53 P.3d 773 (Colo. App. 2002).

Strickland test, while based on the constitutional right to counsel, is applicable to the determination of whether a defendant has received effective assistance of counsel in a post-conviction proceeding. People v. Hickey, 914 P.2d 377 (Colo. App. 1995).

If postconviction counsel is required according to the limited statutory right, that counsel must provide effective assistance as measured by the two-pronged Strickland v. Washington test. Silva v. People, 156 P.3d 1164 (Colo. 2007).

Although the right to effective counsel under subsection (2) is limited, defendant had the right to raise the issue of whether postconviction counsel was ineffective when the trial court appointed postconviction counsel to deal with defendant's letter asserting ineffective assistance of trial counsel, thus demonstrating that defendant's claims had some merit. Furthermore, postconviction counsel, by filing a supplemental motion detailing allegations of ineffective assistance of trial counsel, also demonstrated that defendant's motion had some arguable merit. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

The provisions of this article in no way attempt to control or otherwise influence professional judgment of a lawyer employed as a public defender. Espinoza v. Rogers, 470 F. 2d 1174 (10th Cir. 1972).

Control of client over defense strategy. It is only when the question arises whether the defendant should plead guilty, waive a jury trial, or take the stand that defense counsel must be governed by and abide by the wishes of his client. McClendon v. People, 174 Colo. 7, 481 P.2d 715 (1971).

Under this section, public defender who undertakes an appeal cannot abandon representation on the grounds that the appeal lacks arguable merit. People v. Demarest, 801 P.2d 6 (Colo. App. 1990); People v. Ray, 801 P.2d 8 (Colo. App. 1990).

Standard of advocacy on appeal met. In considering the questions of when the public defender is required to prosecute an appeal and the duties which he has on appeal, the Colorado supreme court held that since the public defender had prepared a brief presenting each of the points that the defendant urged as a basis for appeal, the public defender had carried out the highest standards of the advocate in presenting his client's case, although recognizing the law as it related to the facts, he had submitted his case without oral argument in accordance with the standards of criminal justice. McClendon v. People, 174 Colo. 7, 481 P.2d 715 (1971).

As a matter of law, public defender's seven-year delay in filing a supplemental motion in a challenge that was filed within the time limits prescribed by § 16-5-402 was, in light of all the circumstances, outside the wide range of professionally competent assistance. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

When defendant claims that his or her limited statutory right to effective assistance of counsel was violated, the right is not constitutional. Violations of statutory rights do not necessarily require the same remedies as violations of constitutional rights. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

When defense counsel's ineffective assistance deprives a defendant of a hearing on the merits of his or her postconviction claim, the remedy is to provide such a hearing, not to order that defendant be granted a new trial. Vindication of this statutory right trumps society's interest in the finality of convictions. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

Appointed counsel undertook appeal where he resisted his appointment only after prosecuting two prior appeals and the passage of more than ten months since his appointment. People v. Demarest, 801 P.2d 6 (Colo. App. 1990).

Appeal undertaken where counsel represented defendant throughout the trial proceedings and took no action resisting his appointment on appeal until more than one month after the appointment. People v. Ray, 801 P.2d 8 (Colo. App. 1990).

When defendant received numerous advisements to which he indicated his understanding as to the consequences of his refusal to proceed with appointed counsel, he did not overcome the court's finding that his waiver was voluntarily, knowingly, and intelligently made. People v. Haynie, 826 P.2d 371 (Colo. App. 1991).

A court-appointed public defender does not have a duty to prosecute a claim for post-conviction relief after determining that there is no arguable merit to the defendant's claim. People v. Breaman, 939 P.2d 1348 (Colo. 1997).

However, it is not proper for the court to appoint an attorney solely for the purpose of investigating the merit of a defendant's claim. People v. Breaman, 939 P.2d 1348 (Colo. 1997).

Prior to appointing an alternate defense counsel to investigate a claim against another public defender for ineffective assistance of counsel, court may require a public defender to file a sealed affidavit demonstrating facts supporting the claim. People v. Mills, 163 P.3d 1129 (Colo. 2007).

Trial court may, within its discretion, decline to appoint alternate defense counsel to investigate claims for the ineffective assistance of counsel in a prior case. People v. Mills, 163 P.3d 1129 (Colo. 2007).

Applied in People v. Hubbard, 184 Colo. 243, 519 P.2d 945 (1974); People v. Maranjo, 738 P.2d 407 (Colo. App. 1987).

21-1-105. Appointment of other attorney or investigator in place of public defender - contracts for services. (Repealed)

Source: L. 69: R&RE, p. 256, § 30. **C.R.S. 1963:** § 39-21-5. **L. 95:** Entire section amended, p. 1407, § 1, effective July 1. **L. 96:** Entire section repealed, p. 1015, § 2, effective May 23.

21-1-106. Recoupment of fees and costs. In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant and shall notify the judicial district's collection investigator or the controller, who shall institute proceedings pursuant to section 24-30-202.4, C.R.S., as necessary to recover such fees or costs.

Source: L. 81: Entire section added, p. 1051, § 1, effective September 1. **L. 96:** Entire section amended, p. 1016, § 3, effective May 23.

ANNOTATION

Priority of liens. Where notice of the attorney's lien was properly filed before the entry of judgment and before the state's assertion of a lien pursuant to this statute, the attorney's lien had priority. Matter of Estate of Benney, 771 P.2d 7 (Colo. App. 1988), rev'd on other grounds, 790 P.2d 319 (Colo. 1990).

The court should make a finding regarding defendant's ability to pay before ordering costs. People v. Villa-Villa, 983 P.2d 181 (Colo. App. 1997).

Separate reimbursement order requiring defendant to pay costs associated with services of public defender's office was not part of defendant's sentence. Whether an order directing a convicted defendant to reimburse the state for court-appointed counsel is a component of a sentence depends upon the underlying basis of the order. Because the repayment was neither stipulated as part of the plea agreement, nor ordered by the court as a component or condition of the defendant's sentence, the reimbursement order was a separate, independent judgment that did not contravene the defendant's plea agreement. People v. Scott, 176 P.3d 851 (Colo. App. 2007).

Trial court erred in not following chief justice directive in determining the amount of reimbursement. Chief justice directives are an expression of judicial branch policy and are given full force and effect in matters of court administration. Setting the amount of reimbursement based, in part, on factors other than the amount of time public defender devoted to case violated chief justice directive 04-04. People v. Scott, 176 P.3d 851 (Colo. App. 2007).

ARTICLE 2

Alternate Defense Counsel

21-2-101. Alternate defense counsel - policy - commission.

21-2-102. Alternate defense counsel - qualifications - employees.

21-2-103. Representation of indigent persons.
21-2-104. Duties of alternate defense counsel and contract attorneys.
21-2-105. Contracts with attorneys and investigators.
21-2-106. Recoupment of fees and costs.
21-2-107. Complaints against contracted attorneys - procedure.

21-2-101. Alternate defense counsel - policy - commission. (1) The office of alternate defense counsel is hereby created and established as an agency of the judicial department of state government. The general assembly hereby declares that the alternate defense counsel shall provide legal representation in circumstances in which the state public defender has a conflict of interest in providing legal representation. The general assembly hereby declares that the alternate defense counsel at all times shall serve his or her clients independently of any political considerations or private interests, provide to indigent persons accused of crimes legal services that are commensurate with those available to nonindigents, and conduct the office in accordance with the Colorado rules of professional conduct and with the American bar association standards relating to the administration of criminal justice, the defense function.

(2) The Colorado supreme court shall appoint a nine-member alternate defense counsel commission, referred to in this article as the "commission". No more than five members of the commission shall be from the same political party. Six members of the commission shall be attorneys admitted to practice law in this state who have experience in the practice of criminal defense, and three members of the commission shall be citizens of Colorado not admitted to practice law in this state. There shall be one member from each of the congressional districts in the state. Members of the commission shall serve for terms of four years; except that, of the members first appointed, five shall serve for terms of two years. Vacancies on the commission shall be filled by the supreme court for the remainder of any unexpired term. In making appointments to the commission, the supreme court shall consider place of residence, sex, race, and ethnic background. No member of the commission shall be at any time a judge, prosecutor, public defender, or employee of a law enforcement agency. The supreme court shall establish procedures for the operation of the commission.

(3) The commission shall appoint, and may discharge for cause, a person to serve as alternate defense counsel who shall serve a term of five years and until a successor is appointed and qualified. Such person may be reappointed for one or more subsequent five-year terms. A vacancy in the office shall be filled by the commission for the remainder of the unexpired term.

(3.5) No later than September 30, 2007, the commission shall adopt written procedures governing the office of the alternate defense counsel, including but not limited to the hiring, evaluation, and termination of the alternate defense counsel; the resolution of contractual disputes involving the office of the alternate defense counsel; and the processing and resolution of complaints involving the office of the alternate defense counsel.

(4) The commission shall serve as an advisory board to the alternate defense counsel and shall meet at least annually. The commission shall advise the alternate defense counsel concerning the development and maintenance of competent and cost-effective representation.

(5) Members of the commission shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(6) Any expenses incurred for the commission shall be paid from the general operating budget of the office of the alternate defense counsel.

Source: L. 96: Entire article added, p. 1012, § 1, effective May 23. **L. 2000:** (1) amended, p. 1479, § 1, effective August 2. **L. 2002:** (2) amended, p. 944, § 4, effective August 7. **L. 2007:** (2) amended and (3.5) added, p. 323, § 1, effective April 2.

ANNOTATION

Appointment of alternate defense counsel by court is valid even if the individual attorney is not "on the official list" established by the office of alternate defense counsel. Nor does the attorney have to be appointed directly by the office of alternate defense counsel. The existence of the "list" is not a prerequisite to the provision of alternate defense counsel representation. People v. Hodges, 134 P.3d 419 (Colo. App. 2005), aff'd on other grounds, 158 P.3d 922 (Colo. 2007).

Mandatory language in the alternate defense counsel statute limits the district court's authority to appoint counsel for indigent defendants to those attorneys on the "official list" established by the office of alternate defense counsel. The alternate defense counsel statute does not create a statutory right in defendants with regard to its procedural aspects; therefore, representation by counsel not on the "official list" did not violate any cognizable right of the defendant under this statute. Hodge v. People, 158 P.3d 922 (Colo. 2007).

21-2-102. Alternate defense counsel - qualifications - employees. (1) The alternate defense counsel shall have been licensed to practice law in this state for at least five years prior to appointment, and he or she shall devote full time to the performance of his or her duties and shall not engage in the private practice of law.

(2) The compensation of the alternate defense counsel shall be fixed by the general assembly and may not be reduced during the term of his or her appointment.

(3) The alternate defense counsel shall employ and fix the compensation of any other employees necessary to discharge the functions of the office of alternate defense counsel.

Source: L. 96: Entire article added, p 1013, § 1, effective May 23.

21-2-103. Representation of indigent persons. (1) On and after January 1, 1997, the office of alternate defense counsel shall provide legal representation in the following circumstances:

(a) Cases involving conflicts of interest for the state public defender as determined pursuant to subsection (1.5) of this section.

(b) (Deleted by amendment, L. 2000, p. 1479, § 2, effective August 2, 2000.)

(1.5) (a) To request withdrawal from a case due to a conflict of interest, the state public defender shall submit to the court having jurisdiction over the case a motion specifically describing the nature of the conflict of interest. If the state public defender determines that ethical obligations prevent a specific description of the nature of the conflict of interest, the state public defender shall cite any applicable legal authority for the determination, and the portion of the motion that specifically describes the nature of the conflict shall be sealed. In the event an issue arises later concerning whether an actual conflict existed, the sealed portion of the motion may be opened and examined by the original judge or by another judge if necessary to prevent the violation of an ethical obligation.

(b) Upon review of the motion, the court shall determine whether a conflict of interest exists that would require withdrawal of the state public defender and appointment of the alternate defense counsel.

(c) For purposes of this article, a "conflict of interest" may include, but need not be limited to, circumstances in which the state public defender represents a codefendant or a person who is a witness in the case or other circumstances identified in the Colorado rules of professional conduct or other rules of civil procedure as creating a conflict of interest. Case overload, lack of resources, and other similar circumstances shall not constitute a "conflict of interest".

(d) If the court allows withdrawal of the state public defender and appoints the alternate defense counsel and it is later determined that no genuine conflict of interest existed, the office of the state public defender shall reimburse the office of the alternate defense counsel for the cost of the representation.

(2) In cases involving conflicts of interest for the state public defender, the determination of indigency shall be made by the state public defender in accordance with section 21-1-103.

(3) (Deleted by amendment, L. 2000, p. 1479, § 2, effective August 2, 2000.)

(4) The office of alternate defense counsel shall provide legal representation for indigent persons by contracting with licensed attorneys and investigators pursuant to section 21-2-105.

Source: L. 96: Entire article added, p. 1014, § 1, effective May 23. **L. 99:** (1)(a) and (2) amended and (1.5) added, p. 874, § 1, effective August 4. **L. 2000:** (1)(b), (3), and (4) amended, p. 1479, § 2, effective August 2.

ANNOTATION

If defendant wants the state to pay the costs of his attorney and supporting services, his only choice is to be represented by the public defender, or in the case of a conflict, a state-appointed alternate defense counsel. People v. Cardenas, 62 P.3d 621 (Colo. 2002).

Mandatory language in the alternate defense counsel statute limits the district court's authority to appoint counsel for indigent defendants to those attorneys on the "official list" established by the office of alternate defense counsel. The alternate defense counsel statute does not create a statutory right in defendants with regard to its procedural aspects; therefore, representation by counsel not on the "official list" did not violate any cognizable right of the defendant under this statute. Hodge v. People, 158 P.3d 922 (Colo. 2007).

Trial court abused its discretion in disqualifying entire state public defender's office from representing defendant where no direct conflict of interest existed because neither individual public defender representing defendant was involved in prior representation of witnesses, potential conflicts that may have existed with regard to other public defenders within the statewide office could not be imputed under C.R.P.C. 1.11 to individuals representing defendant, and defendant knowingly, intelligently, and voluntarily waived any conflict. People v. Shari, 204 P.3d 453 (Colo. 2009).

21-2-104. Duties of alternate defense counsel and contract attorneys. (1) When representing an indigent person, the attorney under contract with the office of alternate defense counsel shall:

(a) Counsel and defend such person, whether he or she is held in custody, filed on as a delinquent, or charged with a felony offense, at every stage of the proceedings following arrest, detention, or service of process; and

(b) Prosecute any appeals or other remedies before or after conviction that the alternate defense counsel or the contract attorney considers to be in the interest of justice.

(2) In no case shall the alternate defense counsel or a contract attorney be required to prosecute any appeal or other remedy unless the alternate defense counsel or contract attorney is satisfied that there is arguable merit to the proceeding.

Source: L. 96: Entire article added, p. 1014, § 1, effective May 23. **L. 2000:** IP(1) amended, p. 1480, § 3, effective August 2.

21-2-105. Contracts with attorneys and investigators. (1) On and after January 1, 1997, the alternate defense counsel shall contract, where feasible, without prior approval of the court, for the provision of attorney services for cases described in section 21-2-103 (1). To provide for adequate legal representation of indigent persons, the office of alternate defense counsel may contract, where feasible, without prior approval of the court, for the provision of investigative services for cases described in section 21-1-103 (1). The office of alternate defense counsel shall establish, where feasible, a list of approved contract attorneys to serve as counsel and a list of approved investigators to provide investigative services in such cases. As a condition of placement on the approved list, the contracting attorney or investigator shall agree to provide services based on the terms to be established in a contract, at either a fixed fee or the hourly rate for reimbursement set by the supreme court. Terms of the contract shall be negotiated between the alternate defense counsel and the contract attorney or investigator. Contracts made with an attorney shall specify that the services shall be provided subject to the Colorado rules of professional conduct.

(2) Contracts made pursuant to this section shall provide for reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed and paid from state funds

appropriated therefor. The office of alternate defense counsel shall review the bills submitted for reimbursement by any contract attorney or investigator and may approve or deny the payment of such bills in whole or in part based on the terms set forth in the contract negotiated between the alternate defense counsel and the contract attorney or investigator.

Source: L. 96: Entire article added, p. 1015, § 1, effective May 23. **L. 2000:** (1) amended, p. 1480, § 4, effective August 2.

ANNOTATION

The phrase "where feasible" indicates that the existence of the "list" is not a prerequisite to the provision of alternate defense counsel representation. Therefore, appointment of alternate defense counsel by court is valid even if the individual attorney is not "on the official list" established by the office of alternate defense counsel. People v. Hodges, 134 P.3d 419 (Colo. App. 2005), aff'd on other grounds, 158 P.3d 922 (Colo. 2007).

Mandatory language in the alternate defense counsel statute limits the district court's authority to appoint counsel for indigent defendants to those attorneys on the "official list" established by the office of alternate defense counsel. The alternate defense counsel statute does not create a statutory right in defendants with regard to its procedural aspects; therefore, representation by counsel not on the "official list" did not violate any cognizable right of the defendant under this statute. Hodge v. People, 158 P.3d 922 (Colo. 2007).

21-2-106. Recoupment of fees and costs. In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant and shall notify the judicial district's collection investigator or the controller, who shall institute proceedings pursuant to section 24-30-202.4, C.R.S., as necessary to recover such fees or costs.

Source: L. 96: Entire article added, p. 1015, § 1, effective May 23.

21-2-107. Complaints against contracted attorneys - procedure. (1) If a person files a claim for damages arising from professional negligence as a result of an act or omission committed by an attorney during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105:

(a) The complainant shall file with the court a certificate of review in accordance with the provisions of part 6 of article 20 of title 13, C.R.S.;

(b) The attorney shall not be required to file an answer to the complaint until twenty days after the complainant files the accompanying certificate of review; and

(c) The office of the attorney general shall represent the attorney from the time of service of the complaint until the certificate of review is filed; except that, if the office of alternate defense counsel determines that the act or omission that is the basis of the claim did not occur during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105:

(I) The office of alternate defense counsel shall notify the attorney and the office of the attorney general of said determination; and

(II) The office of the attorney general shall not represent the attorney.

(2) Upon the timely filing of a certificate of review as required in subsection (1) of this section, the court shall:

(a) Allow the office of the attorney general to withdraw from representation of the attorney; and

(b) If requested, allow the attorney to substitute new counsel to represent him or her.

(3) If the office of the attorney general represents an attorney pursuant to paragraph (c) of subsection (1) of this section and the court determines that the act or omission that is the basis of the claim did not occur during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105, the

office of the attorney general may request, and in response to such a request the court shall order, the attorney to reimburse the office of the attorney general for reasonable costs and reasonable attorney fees incurred by the office of the attorney general during the course of the representation.

(4) If a person files a claim for damages that arise from professional negligence as a result of an act or omission committed by an attorney during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105 and the attorney's contract for insurance with his or her malpractice insurance carrier requires the attorney to notify the insurance carrier upon the filing of a claim against the attorney, the insurance carrier may not consider the claim in determining the amount of the attorney's future malpractice insurance premiums unless a certificate of review is timely filed pursuant to paragraph (a) of subsection (1) of this section.

Source: L. 2010: Entire section added, (SB 10-063), ch. 99, p. 339, § 1, effective August 11.